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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA (Asheville)

No. 1:20-cv-00066-WGY

CARYN DEVINS STRICKLAND, formerly known as Jane Roe,  
Plaintiff

vs.

UNITED STATES OF AMERICA, et al,  
Defendants

\*\*\*\*\*

For Bench Trial via Courtroom Zoom Before:  
Judge William G. Young

United States District Court  
District of Massachusetts (Boston)  
One Courthouse Way  
Boston, Massachusetts 02210  
Thursday, December 14, 2023

\*\*\*\*\*

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## I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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DR. PAUL F. WHITE

By Ms. Young:	5		52	
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By Ms. Strickland:		33		53
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JOSHUA CARPENTER

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ANTHONY MARTINEZ (Resumed.)

By Ms. Young:	75			
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By Ms. Strickland:		115		
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P R O C E E D I N G S

(Begins, 9:00 a.m.)

THE COURT: Good morning. And the witness may resume the stand.

MS. YOUNG: The government was planning to start with our expert, Dr. Paul White, who is only available today to testify, if that's all right?

THE COURT: It is all right. I said it was. So we're going to interrupt, and I'll keep my mind suspended. And you may go to your new witness.

And, forgive me, but as we're at a distance, can you identify yourself again?

MS. YOUNG: Oh, of course, your Honor. Danielle Young for the defense. And we call Dr. Paul White.

THE COURT: He may be called.

MS. YOUNG: Thank you, your Honor.

(Dr. White takes the stand.)

(DR. PAUL F. WHITE, sworn.)

\*\*\*\*\*

DR. PAUL F. WHITE

\*\*\*\*\*

DIRECT EXAMINATION BY MS. YOUNG:

Q. Good morning, Dr. White.

1 A. Good morning.

2 Q. Where do you work?

3 A. I work at a firm called Resolution Economics.

4 Q. And how long have you been with Resolution  
5 Economics?

6 A. I've been --

7 THE COURT: Let me interrupt simply because my  
8 practice is always to get the witness to start by the  
9 witness stating his full name. So if you would permit  
10 me.

11 Would you state your full name, sir?

12 THE WITNESS: Yes, sir. Paul F. White.

13 THE COURT: Thank you.

14 And proceed, Ms. Young.

15 MS. YOUNG: Thank you, your Honor.

16 Q. What is your title at Resolution Economics,  
17 Dr. White?

18 A. My title is I'm a labor economist and I'm a  
19 partner at Resolution Economics.

20 MS. YOUNG: Your Honor, can you still see us? It  
21 appears we've lost connection.

22 THE COURT: I can see everything.

23 MS. YOUNG: Okay.

24 THE COURT: Proceed.

25 MS. YOUNG: Thank you, your Honor.

1 Q. Do you do any other related work outside of  
2 Resolution Economics, Dr. White?

3 A. I do, yes.

4 Q. And what is it?

5 A. I serve as a faculty member on a nonprofit  
6 organization called the Institute of Workplace Equality.

7 Q. And how long have you been there for?

8 A. I've been doing that, I think, about 6 to 8 years.

9 Q. Okay. And where did you attend college?

10 A. I went to undergraduate school at James Madison  
11 University.

12 Q. And after college did you obtain a graduate  
13 degree, Dr. White?

14 A. I did, I obtained two graduate degrees, a Master's  
15 in Economics with a minor in statistics at North  
16 Carolina State University, and also a PhD in economics,  
17 also with a minor in statistics, also from North  
18 Carolina State.

19 Q. And has your work since graduating graduate school  
20 been in the field you received your Master's and PhD  
21 degrees in?

22 A. It has been, so I've been focused on labor  
23 economics and statistics.

24 Q. Thank you. And can you tell me in more detail  
25 some of the types of work you've done over the past 30

1 years?

2 A. Sure, I'll break it down into categories. One  
3 category has to do with the statistical analysis of  
4 alleged employment discrimination, so we looked at  
5 employer data, we looked to see if there are trends, um,  
6 that show, for examples, females are being paid less  
7 than males who are similarly situated. So that can be  
8 in context of litigation, but it can also be in the  
9 context of collective analyses where, excuse me, an  
10 employer will ask to look at their data to see if there  
11 are any pay gaps by gender or by race, for example, and  
12 we'll look at the data, and we'll see if there are some,  
13 and if there are, we will work with them to help close  
14 those gaps by calculating adjustments to females or  
15 minorities. So there's that kind of work.

16 There's also work related to what I'll refer to  
17 generally as "wage-and-hour cases" that involve claims  
18 of people who are working off the clock or their pay  
19 rate, for whatever reason, is incorrect. And so we do  
20 those type of cases.

21 And then the third major category are  
22 single-plaintiff damages cases like what we have here.

23 Q. And what's one of your common features of your  
24 work as a labor economist?

25 A. I think a general theme of all the work that we do



1 is that we have to build an economical or statistical  
2 model that reflects the reality of the decision-making  
3 process, and that way we feel like we're coming up with  
4 the most sound conclusion.

5 Q. Thank you. And do you offer and analyze survey  
6 data in your work as a labor economist?

7 A. We do quite frequently, yes.

8 Q. And are you familiar with analyzing labor market  
9 data in your work?

10 A. I am, yes.

11 Q. And have you ever been involved in cases in  
12 litigation before this one?

13 A. Yes, many times.

14 Q. About how many times would you say?

15 A. Well I've been doing this work for 30 years, so  
16 well over 500, probably closer to 1,000.

17 Q. And have you ever provided deposition or trial  
18 testimony before?

19 A. I have, yes.

20 Q. About how many times?

21 A. At least probably 75 times.

22 Q. And have you testified in federal court before,  
23 Dr. White?

24 A. Yes, I have.

25 Q. And what subjects have you addressed in your prior

1 testimony?

2 A. Well those are more of the subjects I've talked  
3 about already, the statistical analysis of alleged  
4 employment discrimination, single-plaintiff damage  
5 cases, and the wage-and-hour cases I mentioned earlier.

6 Q. Did any of those cases involve similar issues to  
7 this case?

8 A. Yes, the single-plaintiff damage cases are very  
9 similar to what we're talking about here today.

10 Q. And were you qualified as an expert by the Court  
11 in those single-plaintiff cases?

12 A. I was, yes.

13 Q. In what areas were you qualified by the Court in  
14 those cases?

15 A. In those cases I was qualified as a labor  
16 economist.

17 Q. And are you a member of any professional  
18 associations, Dr. White?

19 A. I am, yes.

20 Q. In which associations?

21 A. In two of them, one is called the American  
22 Economic Association, and the second one is called the  
23 National Association of Forensic Economists.

24 Q. And what documents or other materials did you use  
25 for purposes of preparing your testimony today?

1 A. Well generally speaking I reviewed my report, the  
2 report of the plaintiff's economic expert, I reviewed  
3 the deposition. There was the complaint of course.  
4 There are, um, earnings documents and personal documents  
5 associated with Ms. Strickland's work history.

6 Q. And which of plaintiff's expert reports did you  
7 focus on?

8 A. Which of the plaintiff's expert's reports? Um, I  
9 don't remember the dates, but it would have been the  
10 two -- I think there were two that were, um, produced by  
11 Dr. Albrecht.

12 Q. Thank you. And would you please summarize  
13 generally the focus of Dr. Albrecht's reports?

14 A. Yeah, the focus of his approach is to estimate the  
15 earnings of Ms. Strickland had her employment with FDO  
16 not ended when it did, and to project what her earnings  
17 might have been had that employment not ended, and then  
18 also to compare that to a measure of what her earnings  
19 are now that her employment with FDO did end, and to  
20 calculate the difference between the two.

21 Q. Thank you. And what was your assignment in this  
22 case, Dr. White?

23 A. My assignment was to review Dr. Albrecht's  
24 analysis and methodology and his math, and see if I had  
25 any concerns with his assumptions that go behind the

1 calculations.

2 Q. And were you also assigned to calculate your own  
3 estimate of economic damages in this case?

4 A. Only if I had some concerns with his approach, I  
5 calculated alternative estimates of the potential  
6 economic losses.

7 Q. Are you opining that the defendants are liable in  
8 this matter?

9 A. No, I have no --

10 THE COURT: I didn't understand that question?  
11 Put it again.

12 MS. YOUNG: I just --

13 Q. Are you opining that the defendants are liable in  
14 this matter?

15 A. No, I'm not, I have no opinion whatsoever about  
16 the liability in this case.

17 Q. And how would you describe the methodology that  
18 you used in preparing your opinion?

19 A. The methodology I used is structured similar to  
20 Dr. Albrecht's, meaning I have, um, looked at potential  
21 earnings of Ms. Strickland had her employment with FDO  
22 not ended, and I've also looked at an alternative  
23 measure of her earnings given that it did end, and I'd  
24 calculate the difference between the two.

25 Q. Is the methodology that you described widely used

1 by other economists in the field?

2 A. It is, yes.

3 Q. And did the application of this methodology allow  
4 you to reach the opinion outlined in your report in this  
5 case?

6 A. It did.

7 MS. YOUNG: Your Honor, at this time I move to  
8 have Dr. Paul White qualified as an expert witness in  
9 labor economics.

10 THE COURT: I don't follow that practice. You've  
11 laid your foundation and I will simply rule on specific  
12 questions as we go along.

13 MS. YOUNG: Yes, your Honor.

14 Q. Dr. White, can you briefly summarize the opinions  
15 you're offering today?

16 A. Certainly. The opinions that I have today mostly  
17 reflect the concerns that I have with Dr. Albrecht's  
18 approach. So, um, I -- in general I don't believe that  
19 Dr. Albrecht's calculations are based on a realistic  
20 model of potential economic losses.

21 Q. Thank you. And turning to your specific opinions,  
22 would you briefly describe for the Court your first  
23 opinion about Dr. Albrecht's assumption?

24 A. Yes, the first opinion that I have about  
25 Dr. Albrecht's assumption is that his calculations make

1 the assumption that had Ms. Strickland's employment with  
2 FDO not ended in 2019 when it did, then her earnings and  
3 her employment with FDO would have continued for the  
4 rest of her career, for over 30 years, and until the  
5 year 2055. So with 100 percent certainty, she would  
6 have remained at FDO for the rest of her career.

7 Q. And why do you believe that assumption is not  
8 valid?

9 A. I believe that assumption is not valid because we  
10 do see data that shows that people do leave the  
11 employment of FDO, that people don't stay there their  
12 entire careers, and, um, 30-plus years in the future is  
13 a long way to assume something's going to happen with  
14 100 percent probability.

15 Q. Are you familiar with the "Privately-Appointed  
16 Counsel of 2019 Fiscal Year Study" which was used by  
17 plaintiff's expert?

18 A. Yes, I am. Yes.

19 Q. Is it relevant to your opinion that the -- I'm  
20 going to call it the "PAC Survey," the P-A-C Survey, it  
21 states that one in two self-employed defense attorneys  
22 have cut down their practice or taken less work?

23 A. Yes, it is relevant. Yes.

24 Q. I mean how so?

25 A. Um --

1 MS. STRICKLAND: Your Honor, I'm going to object,  
2 this is not what's in the report that I am aware of.

3 THE COURT: Where is it in the report, Ms. Young?

4 MS. YOUNG: It goes directly to --

5 THE COURT: No, no, where is it in his report?  
6 Identify it in his report. Or is this some something  
7 new?

8 MS. YOUNG: It goes to the assumption that the  
9 employment running through 2055 is not valid.

10 THE COURT: And where does he say this in his  
11 report?

12 MS. YOUNG: On Page -- I believe it's on Pages 3  
13 and 4 of the report, your Honor.

14 THE COURT: He may testify consistent with the  
15 report.

16 Go ahead.

17 MS. STRICKLAND: Your Honor, may I be heard?

18 THE COURT: You may.

19 MS. STRICKLAND: Thank you, your Honor.

20 I don't see anything on Pages 3 or 4 of the report  
21 that say anything about whether attorneys have left the  
22 public defense profession.

23 THE COURT: And your answer, Ms. Young? It  
24 doesn't, does it?

25 MS. YOUNG: It just goes to the assumptions

1 discussed on Pages 3 and 4.

2 THE COURT: Well then I'll sustain the objection.  
3 We're getting into other matters. And he's held to the  
4 report.

5 Go ahead.

6 MS. YOUNG: Yes, your Honor.

7 Q. Dr. Albrecht, you mentioned a moment ago that  
8 there's other data on tenure for Assistant Federal  
9 Public Defenders, is that correct?

10 A. That's correct, yes.

11 Q. And what data are you referring to on Assistant  
12 Federal Public Defenders?

13 A. There's a document that I cited in my report that  
14 shows the, um -- the hire dates and termination dates of  
15 public defenders who have terminated in the last 2  
16 years.

17 Q. And what is the source of that data?

18 A. My understanding is from the public defender's  
19 office.

20 Q. And that's cited on Page 4 of your report, is that  
21 correct?

22 A. I believe so, yes.

23 Q. And how did that data inform your analysis?

24 A. It just supported, um, the belief that people  
25 don't stay at that office for their entire careers, and



1 when they do leave, they're not leaving after 30 years,  
2 much earlier than that.

3 Q. And turning to your second opinion in your report,  
4 um, regarding plaintiff's expert's assumption that  
5 plaintiff will not catch up to her earnings at the FDO  
6 prior to 2055. Would you explain the basis for that  
7 opinion?

8 A. Yes.

9 MS. STRICKLAND: Your Honor, I'm going to object  
10 to this and renew our motion in limine about the  
11 mitigation defense.

12 THE COURT: Overruled, he may testify. Your  
13 rights are saved.

14 A. One of Dr. Albrecht's other assumptions was that,  
15 um, Ms. Strickland's current earnings level would  
16 essentially continue also throughout the rest of her  
17 career, 30 plus years until the year 2055 or so, and  
18 with 100 percent certainty. And so what that means is  
19 that her earnings are quite a bit lower now than they  
20 were when she was with the FDO's office, and  
21 Dr. Albrecht has assumed that there's no chance that she  
22 would ever earn more than she's currently earning, and  
23 therefore would never catch up or meet or exceed what  
24 she had earned at the FDO office.

25 Q. And you discussed in your report plaintiff's

1 overhead expenses, is that right?

2 A. That's correct.

3 Q. And why is Dr. Albrecht's assumption about  
4 plaintiff's overhead expenses, in her current role as a  
5 self-employed defense attorney, important?

6 A. It's important because the -- I mentioned  
7 Dr. Albrecht has compared the investment of  
8 Ms. Strickland's earnings at FDO had she not -- had her  
9 employment not ended at the FDO, versus what she is  
10 earning now in net of expenses. And so the expenses are  
11 taking out -- are excluded from those offset earnings.  
12 And therefore if his estimate of her expenses are  
13 inflated, then so would her -- then so would his  
14 estimate of her economic losses also be inflated.

15 Q. And based on available information, what  
16 deficiencies did you identify with respect to  
17 Dr. Albrecht's assumptions regarding plaintiff's  
18 expenses and income as a self-employed defense attorney,  
19 as outlined in your report?

20 A. As outlined in my report, Dr. Albrecht relied upon  
21 a survey of indigent defense attorneys in the State of  
22 North Carolina, and that survey, um, the number that he  
23 cited in that survey, um, was based upon the overhead  
24 expenses for 10, I think maybe 13 different categories.  
25 Every category that's listed in that survey goes into

1 the number that Dr. Albrecht has relied upon.

2 Dr. Albrecht, in his report, did not attempt to  
3 identify the ones that -- the components that  
4 Ms. Strickland is actually incurring, and so  
5 Dr. Albrecht has not based his estimate of overhead cost  
6 on what Ms. Strickland is actually incurring, but rather  
7 on the survey that includes some components that she may  
8 not be incurring at all.

9 Q. And are you referring to the PAC 2019 Fiscal Year  
10 survey, is that correct?

11 A. Yes, I am.

12 Q. And how does that table regarding overhead costs,  
13 how are those calculated in the table?

14 A. The table that Dr. Albrecht relied upon?

15 Q. Yes.

16 A. All right. If I recall correctly it had maybe 13  
17 different categories of overhead and it was the median  
18 monthly value for each of those categories.

19 Dr. Albrecht added up all of those categories to come up  
20 with a total, and then he multiplied that total by 12, I  
21 believe, and maybe increased it by inflation, because  
22 the survey was a couple of years old, um, to come up  
23 with his number of overhead cost.

24 Q. And what was the response rate for that PAC 2019  
25 survey?

1 A. The response rate was only about 13 percent.

2 Q. Is that number important?

3 A. It is important.

4 MS. STRICKLAND: Your Honor, I'm going to object.  
5 I don't believe this is in the report.

6 THE COURT: Where is it?

7 (Pause.)

8 MS. YOUNG: I'll withdraw the question, your  
9 Honor.

10 THE COURT: Very well.

11 Q. Dr. White, do you discuss the differences between  
12 the table Dr. Albrecht relied on in the study and the  
13 respondent's actual median cost identified in the study  
14 in your report?

15 A. I do, yes.

16 Q. On what page?

17 A. I don't recall the page number.

18 Q. Have you prepared a demonstrative that visualizes  
19 the differences between Dr. Albrecht's calculations  
20 based on the hypothetical -- sorry, the table in the  
21 study, and respondent's actual median cost identified in  
22 the study and discussed in your report?

23 A. I have, yes.

24 MS. YOUNG: Your Honor, may I present just three  
25 brief demonstratives from Dr. White's -- from Dr. White,

1 via the trial director, solely for demonstrative  
2 purposes as an aid to the Court, not for admission as an  
3 exhibit?

4 THE COURT: I understand. You may proceed.

5 MS. YOUNG: Thank you.

6 Mr. Spear, can I have Slide 2, please.

7 (On screen.)

8 Q. All right, Dr. White. What was the median  
9 overhead cost per hour reported by survey respondents?

10 A. I'm sorry, could you repeat the question?

11 Q. Of course.

12 Dr. White, what was the median overhead cost per  
13 hour reported by survey respondents in that PAC 2019  
14 survey?

15 A. The median actual cost was \$21.72 per hour.

16 Q. And is that represented in your graph here?

17 A. It is, yes, that is the -- that is the bar on the  
18 right-hand side, the orange section, the bottom side,  
19 \$21.72.

20 Q. And what data from the survey did Dr. Albrecht  
21 rely on?

22 A. As I mentioned before, he relied on the median  
23 value for every potential component in that survey, and  
24 that ended up being the orange box on the left side bar,  
25 which was \$48 an hour. And so what this tells us is

1     that, um, the typical respondent to this survey didn't  
2     actually incur all those 13 different categories of  
3     cost, that the typical respondent didn't incur \$48 an  
4     hour of overhead, the typical respondent actually  
5     incurred about \$21.72 per hour.

6     Q.     And does the table Dr. Albrecht relied on, does it  
7     account for respondents with low overhead costs?

8     A.     No, that survey, um, by definition excluded those  
9     that had it, a relatively low or a very small overhead  
10    cost.

11    Q.     And is that significant?

12    A.     It is significant because it makes the numbers for  
13    all -- all the numbers reported in that survey higher  
14    than what they otherwise would be if those lower amounts  
15    were included.

16    Q.     And how did the table Dr. Albrecht relied on  
17    calculate costs for paralegal support?

18    A.     It's interesting that the survey did not include  
19    paralegal support, um, or did not include the numbers  
20    that they reported for paralegal support, because the  
21    vast majority of the respondents did not have  
22    paralegals. So instead, that survey relied upon other  
23    publicly-available data from, I believe, the Bureau of  
24    Labor Statistics for the overhead part of that table.

25    Q.     Is using industry-wide median paralegal costs, as

1     opposed to respondent's median paralegal costs,  
2     significant?

3     A.     It is significant. We would have rather had the  
4     actual respondent's overhead costs. As I mentioned,  
5     very few respondents -- excuse me. We would have much  
6     rather had the respondent's paralegal costs, which was  
7     salary and benefits, um, then some industry-wide  
8     average, because the industry-wide average is going to  
9     include the whole state of North Carolina, and it's  
10    going to include also, um, lots of different practices,  
11    lots of different law firm situations. The fact that  
12    the vast majority of the respondents did not have  
13    paralegals is very important to understand for this  
14    particular survey because the paralegal costs of -- of  
15    the number that Dr. Albrecht relied upon, I think is  
16    roughly, um, \$5,000 per month. Well let's just use  
17    round numbers. Roughly \$5,000 per month. I believe  
18    it's the case that about \$4,000 of that \$5,000 is  
19    directly related to paralegal costs. So the vast  
20    majority of those paralegal costs -- the vast majority  
21    of the total overhead costs were for paralegals.

22    Q.     Is Dr. Albrecht's use of that table valid in this  
23    field?

24    A.     No, I don't believe it's valid in this field as it  
25    applies to this particular case.

1 Q. Have you been provided documentation of  
2 plaintiff's reimbursements, expenses, and income, as a  
3 self-employed defense attorney?

4 A. I have seen some of that, yes.

5 Q. Turning to plaintiff's likely future earnings, is  
6 it your opinion that plaintiff will obtain more  
7 lucrative employment in the future than her current  
8 employment?

9 MS. STRICKLAND: Objection, your Honor.

10 THE COURT: Sustained. Sustained. Sustained.  
11 You're leading the witness. There's no need. Proceed.

12 Q. Dr. Albrecht, on Page 5 on your report you discuss  
13 plaintiff's potential future earnings, is that right?

14 A. That's correct, yes.

15 Q. And how did you determine plaintiff had the  
16 capacity to earn more lucrative employment in the  
17 future?

18 A. I looked at sources of attorney earnings data from  
19 the labor statistics, I could see that, um --

20 MS. STRICKLAND: I would object, your Honor. I  
21 believe that this actually comes from Dr. Jackson's  
22 report, and in that sense it's hearsay.

23 MS. YOUNG: It's on Page 5 of the report.

24 THE COURT: Yes, but it's in the report. He may  
25 testify to his views. But your point is well taken.



1 But he may testify to his views.

2 MS. STRICKLAND: Thank you, your Honor.

3 THE COURT: Well the question may be answered.  
4 You may answer it, testifying to your own opinion, sir.

5 (Silence.)

6 MS. YOUNG: Um, I'll reask the question just to  
7 get us reoriented.

8 Q. How did you determine the plaintiff had the  
9 capacity to earn more lucrative employment in the  
10 future?

11 A. So I observed the plaintiff's actual earnings, um,  
12 which were in the \$40,000 to \$50,000 range, and I  
13 compared that to the earnings of attorneys, um, in  
14 different measures, one of them being in the Charlotte  
15 area, another measure being, um -- plaintiff went to  
16 Duke University, so I was able to find data on recent  
17 graduates from Duke University, and I compared those  
18 earnings levels and I saw that they are much higher than  
19 what the plaintiff is currently earning.

20 Q. And that's on Page 5 of your report, is that  
21 correct?

22 A. I believe so, yes.

23 Q. And have you prepared a video aid demonstrating  
24 your opinion regarding the differences in Dr. Albrecht's  
25 calculations with respect to plaintiff's future earnings

1 in the market data?

2 A. I have, yes.

3 MS. YOUNG: Mr. Spears, can I please have Slide 3.

4 (On screen.)

5 MS. YOUNG: Thank you.

6 Q. Dr. White, can you please explain this bar graph.

7 A. Sure. Let's start at the far right. And these  
8 are all pre-tax numbers. So let's start at the far  
9 right.

10 The brown bar on the right-hand side is pre-tax  
11 Dr. Albrecht's projection of the plaintiff's earnings  
12 going forward, again for the rest of her career,  
13 \$54,000. The orange bar just to the left of that,  
14 \$179,000, is what she was earning at the time that her  
15 employment with FDO ended projected up until 2024. So  
16 Dr. Albrecht has essentially modeled and calculated the  
17 difference between the orange bar and the brown bar, and  
18 that's the basis of his economic losses.

19 However, if you compare the brown bar, the \$54,000  
20 that she's currently earning, to other measures of what  
21 attorneys are making, you can see, for example, on the  
22 far left-hand side, recent Duke Law School graduates,  
23 \$215,000, the average lawyer in Charlotte, North  
24 Carolina, \$162,000. And so it just shows that, um, the  
25 plaintiff, um, if she were to work somewhere else, could

1 very easily make more than what she's earning.

2 Q. Thank you.

3 Turning back to your opinion that Dr. Albrecht's  
4 assumption that plaintiff will remain at the FDO through  
5 2055 and will never recapture her earnings is invalid,  
6 do you have a visual aid showing Dr. Albrecht's  
7 calculations with respect to plaintiff's future earnings  
8 outlined in your report?

9 A. I do, yes.

10 MS. YOUNG: Mr. Spears, can I please have Slide 4.

11 (On screen.)

12 MS. YOUNG: Thank you.

13 Q. Can you explain these line graphs, Dr. White.

14 A. Certainly. Let's start by explaining the chart.  
15 So on the top axis you can see the years, the first year  
16 is 2024 and it goes all the way out to 2067, that is --  
17 the first, 2024, is the beginning of the front pay  
18 period, and 2067 is the plaintiff's life expectancy.  
19 The vertical axis is dollars. And let's start with the  
20 blue line at the top.

21 The blue line starts just under \$150,000, that is  
22 after tax what Dr. Albrecht has assumed that, um,  
23 Ms. Strickland would have earned at the FDO had her  
24 employment not ended in 2019, um, in 2024 dollars, and  
25 as I said before, he assumes that she will stay there

1 the rest of her career, that's why this blue line starts  
2 in 2024 and goes all the way up to 2055 before it takes  
3 a dip. So that 2055 is Dr. Albrecht's assumption of the  
4 plaintiff's retirement date. And once that blue line  
5 dips, then she still earns her pension from the federal  
6 government. That's why you see the horizontal line  
7 starting in 2056 going off to the right.

8 So this is a graphical representation of his  
9 projection of what she would have been earning at FDO  
10 had her employment not ended in 2019. And again the big  
11 assumption here is that she would have stayed there the  
12 rest of her career.

13 Now compare that to the orange line that's  
14 somewhere in the \$40,000 range. Again it also starts in  
15 2024. And this represents his projection of her  
16 earnings going forward. So he says that she would start  
17 earning roughly \$40-some-thousand dollars and that would  
18 continue. So it would never change, it would never go  
19 up for the rest of her career. And then it would stay  
20 that way until 2055, and then she would retire, but with  
21 no pension.

22 So as I mentioned earlier, a couple of the  
23 concerns I have with Dr. Albrecht's methodology, (A) the  
24 blue line, it never stops, meaning that she would have  
25 stayed with FDO the rest of her career, and the orange

1 line, it never gets closer to the blue line. So no  
2 matter what, for the rest of her career, he has her  
3 never earning more than she's currently earning despite  
4 the market data to suggest otherwise.

5 Q. Thank you.

6 Is Dr. Albrecht's assumption that plaintiff will  
7 never recapture her prior earnings amount at the FDO  
8 supported by evidence in your opinion?

9 A. I don't think so. For the reasons I mentioned  
10 earlier the market data would suggest that if she chose  
11 to do so, she could earn a lot more than she's earning  
12 right now.

13 Q. Is that assumption significant?

14 A. It is, yes. Dr. Albrecht, getting back to this  
15 exhibit, essentially has defined the losses as the area  
16 between the two lines, and if she were to earn more in  
17 another job, then that orange line would get closer to  
18 the blue line, maybe even exceed the blue line, which  
19 would cut off the damages if she chose to earn at a  
20 different level.

21 Q. Are there any issues with Dr. Albrecht's  
22 methodology?

23 A. Yes, the three main issues. One is the continued,  
24 um -- the assumption of continued employment with the  
25 FDO, the assumption of her earnings capacity being as

1 low as it is, in the \$40,000 range, and then also the  
2 assumption that her earnings would never catch up to her  
3 federal government earnings in time for the next 30-plus  
4 years.

5 Q. Thank you.

6 Turning to your own calculations, Dr. White, what  
7 are the two main scenarios you discuss in your report?

8 A. The two main scenarios have to do with different  
9 assumptions on when she could catch up to her FDO  
10 earnings.

11 So the first assumption is based on the premise  
12 that if she loses her, um -- if her employment at FDO  
13 ends, then we look at a data source called the  
14 "Displaced Worker Survey," and we look to see how long  
15 it takes people to find another job that gets them  
16 closer to their previous earnings, and we found that  
17 that amount was about 5 months, about 20 weeks. So the  
18 first scenario assumed that it takes her 20 weeks to  
19 find another job that earned as much as she would have  
20 been earning at FDO. And at that point the economic  
21 losses stop.

22 Q. And so what estimate of potential economic losses  
23 did you calculate based on that first scenario, 1A, you  
24 just mentioned in your report?

25 A. That estimate is about -- as I said, about 20

1 weeks worth of economic losses, so that ended up being,  
2 I believe, \$42,000, something in that range. It's in  
3 the report.

4 Q. And turning to the second scenario addressed in  
5 your report. What estimates of potential economic  
6 losses did you calculate based on your method as  
7 outlined in the second scenario, 2A, in your report?

8 A. The second scenario, um, recognizes that the  
9 plaintiff graduated from law school in 20 -- um, let's  
10 see, 2013, and it took her 6 years to get up to that  
11 level of FDO earnings that she had at the time she left,  
12 so 2013 to 2016. And so we took the second scenario  
13 where we said, okay, she loses her job at FDO and we  
14 give her not 20 weeks to catch up to her FDO earnings,  
15 but we give her 6 years to catch up to her FDO earnings.  
16 And so she gets a job, she's working at her current  
17 level of earnings, but then we give her 6 years to get  
18 back up to where she was.

19 Q. And do you remember about the total economic loss  
20 calculated in Scenario 2A in your report, approximately?

21 A. Approximately I want to say \$462,000, if I have  
22 that correct?

23 Q. Would it refresh your recollection if I provided  
24 you a copy of your report to provide the exact numbers?

25 A. It would, yes.

1 MS. YOUNG: Your Honor, may I approach the  
2 witness?

3 THE COURT: You may.

4 Q. Dr. White, can we go back to Scenario 1A and get  
5 the exact number as outlined in your report.

6 A. Yes, the number for Scenario 1A is \$46,675.

7 Q. And can we also please -- can you please state the  
8 economic losses calculated in Scenario 2A in your  
9 report?

10 A. Yes, \$425,916.

11 Q. Thank you.

12 And, Doctor, why should the Court adopt your  
13 opinions rather than those of plaintiff's expert,  
14 Dr. Albrecht?

15 A. I believe my methodology is more realistic than  
16 Dr. Albrecht's methodology, I account for the  
17 possibility that she wouldn't have stayed there the rest  
18 of her career. I account for the possibility that if  
19 she chose to, she could earn more as a lawyer than she  
20 is right now.

21 Q. (Pause.) Does your compensation depend on the  
22 outcome of this case, Dr. White?

23 A. No, not at all.

24 MS. YOUNG: That's it. Thank you very much.

25 Your Honor, the defendant passes the witness.



1 THE COURT: Thank you.

2 Ms. Strickland, do you wish to examine this  
3 witness?

4 MS. STRICKLAND: Yes, your Honor, thank you.

5 THE COURT: You may.

6

7 CROSS-EXAMINATION BY MS. STRICKLAND:

8 Q. Good morning, Dr. White.

9 A. Good morning.

10 Q. Dr. White, you were hired by the defendants for  
11 your expert report and your trial testimony today, is  
12 that right?

13 A. That is correct, yes.

14 Q. How much have you been paid in total by the  
15 defendants?

16 A. I don't know.

17 Q. Does somewhere in the range of \$72,000 sound right  
18 to you?

19 A. I don't know.

20 Q. (Pause.) And you testified that part of what you  
21 were asked to -- I'm sorry. I apologize.

22 Would it refresh your recollection if you were to  
23 review a document regarding your payment in this case?

24 A. Sure, yeah.

25 Q. Okay. (On screen.) Are you familiar with this

1 document?

2 A. This looks to be a contract. I don't know which  
3 contract this is, but, yes, this looks to be a contract.

4 Q. Does that say, in the word amount, of \$57,900?

5 A. It does, yes.

6 Q. And is it dated April 17th, 2023? Oh, just a  
7 second.

8 A. It is. Now one thing to keep in mind about these  
9 contracts, this is the amount that's been allocated for  
10 our work, it's not necessarily what we're paid. If we  
11 come in well below this amount, then that's what we're  
12 going to be paid. So I suggest this is just a budget  
13 allocation, not the actual payment.

14 A. Okay, well thank you for clarifying that.

15 So you testified today that, um -- okay, thank  
16 you.

17 So you've reviewed Dr. Albrecht's report, is that  
18 right --

19 A. That's correct, yes.

20 Q. -- for this case and, um, did you mention that he  
21 had also created a revised report that you may have  
22 reviewed. Do you recall that?

23 A. I do recall he had a revised report, yes.

24 Q. Okay, thank you. And you were asked to provide  
25 calculations of the plaintiff's alleged economic losses

1 in the event the finder of fact determines the plaintiff  
2 is entitled to damages, is that right?

3 A. That's correct, yes.

4 Q. Okay. So I want to turn first to your testimony  
5 at the end about the alternative losses scenarios.

6 So under your first scenario, you state your  
7 conclusions based on the assumption that plaintiff finds  
8 replacement employment as of January 1st, 2024, is that  
9 right?

10 A. Um, yes. Right.

11 Q. Is January 2024 a month from now?

12 A. Um, it is.

13 Q. And by "replacement employment," do you mean by  
14 that that the plaintiff's earnings were the same as they  
15 were at the FDO?

16 A. Um, yes, the plaintiff would have found earnings,  
17 um, that meets or exceeds what she would have earned at  
18 the FDO.

19 Q. Okay. And so your testimony today is that if  
20 plaintiff finds replacement employment with the federal  
21 government by January 1st, 2024, her potential losses  
22 are \$46,610 -- sorry, \$46,675. Does that sound right?

23 A. Yes.

24 Q. Okay. And if you find that plaintiff does not  
25 find replacement employment with the federal government

1 but her earnings are the same as the FDO, her total  
2 potential loss is \$375,004, is that right?

3 A. That's the amount that would include pension  
4 losses, yes, if she finds alternative employment, but  
5 not an alternative pension.

6 Q. Right, okay, so that includes the value of the  
7 projected for pension?

8 A. That's correct, yes.

9 Q. Okay, great. So then turning to your Scenario 2,  
10 your testimony about Scenario 2 is based on the  
11 assumption that it will take 6 years to recover lost  
12 earnings, is that right?

13 A. That's correct.

14 Q. Okay. And you chose that assumption of 6 years  
15 based on the fact that it took 6 years from graduation  
16 from law school to reach those earnings at the FDO, is  
17 that right?

18 A. That's right.

19 Q. Did you select 6 years for this assumption because  
20 6 years is a reasonable assumption to make based on  
21 those facts?

22 A. No, I think the reasonable assumption to make is  
23 the first scenario. We want to be conservative as well  
24 and show what we thought would be the most upperbound  
25 amount. So given that the plaintiff took 6 years to get

1 to that level, we thought, "Okay, let's put in the  
2 scenario that says 'Let's just start from scratch,' um,  
3 and give her the opportunity to rebuild her career. And  
4 if she was able to do it in 6 years the first time,  
5 let's do another assumption that says, "Let's give her 6  
6 years to do it a second time."

7 Q. Okay, and that's because that's a potentially  
8 realistic scenario, even if you don't think it's the  
9 most likely one, is that right?

10 A. I don't think it's -- I think it's  
11 ultraconservative, to be honest with you, because I  
12 think that -- well given the level of earnings the  
13 plaintiff currently has versus the market, I think it  
14 wouldn't take 6 years at all.

15 Q. Well we'll get to the market assumptions in a  
16 little bit.

17 But, um, during the 6-year period, did you assume  
18 that the plaintiff's earnings increased each year until  
19 essentially the gap was 0?

20 A. That's correct, yes.

21 Q. Okay. And, um, under this scenario you calculated  
22 that if the pension losses are not mitigated, the total  
23 losses are \$692,881, is that right?

24 A. That is correct, yes.

25 Q. Okay. And, um, to be clear, this scenario is

1 based on the assumption of full mitigation after 6  
2 years, is that right?

3 A. Yes.

4 Q. So is it fair to say that you were assuming that  
5 an alleged failure to mitigate is a relevant issue in  
6 this case?

7 MS. YOUNG: Objection, that misstates prior  
8 testimony.

9 THE COURT: I will really don't understand that  
10 question, so I'll ask that another question be put. I  
11 don't understand the question.

12 MS. STRICKLAND: Well, your Honor, we're just  
13 asking whether, um, mitigation efforts are a relevant  
14 issue -- whether his assumption is based on mitigation  
15 after it's being relevant to his calculation?

16 THE COURT: Well I've ruled that you have to prove  
17 the damages. Now his various assumptions seem to me to  
18 directly go to that issue and, um, as do the assumptions  
19 made by your expert, Mr. Albrecht. So I continue not to  
20 understand what you're asking there?

21 MS. STRICKLAND: Okay, yes, your Honor, I'll ask  
22 it one more way and if it doesn't work, I'll move on.

23 Q. If plaintiff did in fact adequately mitigate her  
24 damages with the employment issues she's chosen now, is  
25 it fair to say that your loss-earnings calculation would

1     increase?

2     A.     Um, I -- as a labor economist I'm not going to  
3     opine on the legal question of whether or not plaintiff  
4     has adequately attempted to mitigate her earnings. So  
5     I'm just looking at the market levels, um, in the  
6     economic survey data, I'm looking at the earnings  
7     streams that we have and the data that I cited. So I'm  
8     not making any opinion on anybody's mitigation efforts  
9     and whether they are sufficient.

10    Q.     Okay, thank you for clarifying that.

11           So you testified that one of your, um -- one of  
12    your criticisms of Dr. Albrecht's report is that it  
13    assumes that plaintiff never would have ended employment  
14    at the FDO prior to retirement. Is that, um -- is that  
15    right?

16    A.     That is right, yes.

17    Q.     Wouldn't you agree that estimating front pay  
18    always involved some degree of speculation?

19    A.     It, um -- yeah, it involves some degree of  
20    estimation into the future, but that estimation can be  
21    refined to be more realistic.

22    Q.     And when you're looking at the -- a labor  
23    economist at what somebody is likely to do in the  
24    future, is it fair to say that part of that  
25    determination is looking at what that individual has

1 done in the past?

2 A. Or if it did involve what's happened in the past,  
3 yes.

4 Q. Okay. If the individual has a track record of  
5 doing the same type of work, is it fair to assume that  
6 they might continue doing the same type of work?

7 A. They may do the same type of work, but maybe not  
8 at the same employer. If there's turnover in a  
9 particular employer, then that employment would not have  
10 lasted for the rest of the career.

11 Q. And is it -- if a -- if an individual has been  
12 doing the same type of work for a period of time, is it  
13 speculative to assume that they will switch to a  
14 different type of work?

15 A. I'm sorry, what do you mean by a "different type  
16 of work"?

17 Q. To a different -- a different career path, a  
18 different field.

19 A. A different field? That's different. Um, I don't  
20 want to use the word "different," but a different type  
21 of -- a "practice area," can we say that?

22 Q. Yeah, that's a good -- thank you.

23 A. It's a totally different concept than a different  
24 employer.

25 Q. Right.



1       A.       I'm not making any assumptions, nor do I think  
2       that Dr. Albrecht is about whether or not the plaintiff  
3       would have changed practice areas.

4       Q.       Right. Right. Okay. Okay, thank you.

5               So, um, I just want to ask a couple of questions  
6       about this "Demonstrative Market Salary Level, Lawyers  
7       versus Plaintiff's Experts' projected future earnings.

8               Is it fair to say that this chart is based on  
9       projected earnings for lawyers in the legal profession  
10      as a whole?

11      A.       Um, yes, the two market values?

12      Q.       Um, yes.

13      A.       Yes, the Duke University as well as the Charlotte  
14      area, yes.

15      Q.       Did you look at earnings for public defenders in  
16      North Carolina for this chart?

17      A.       It's not on the chart. But, no, I've not looked  
18      at earnings for public defenders.

19      Q.       Did you look at earnings for private-appointed  
20      counsel in the State of North Carolina for this chart?

21      A.       Not for this chart, no.

22      Q.       So by "Earnings Capacity," you are looking at just  
23      earnings potential in the legal profession, not public  
24      defense work?

25      A.       Not public defense work. But I note, for example,

1     that public defense work would still pay more than what  
2     plaintiff is currently earning. If I understand -- if I  
3     remember correctly, shortly after plaintiff's employment  
4     with FDO ended, she obtained a clerk job that paid  
5     exactly the same amount as what she was earning at FDO.  
6     So there's a data point that shows that even in the same  
7     type of work, just a different employer, plaintiff could  
8     still be earning much more than she's currently earning.

9     Q.     Sure. But just to be clear, there's nothing about  
10    public defender salaries in this chart?

11    A.     Not in this chart, but that is in the record.

12    Q.     Okay, thank you.

13            Now, and, um, I'm sorry, just to be clear, serving  
14    as a judicial law clerk is not the same thing as being a  
15    public defender, is that right?

16    A.     Um, I'm -- I don't know.

17    Q.     Okay, I won't ask you something you don't know.

18            So I also would like to ask you -- my apologies  
19    for just skipping through my notes, um -- okay.

20            Is it fair to say that experts in your field often  
21    rely on government data for making assumptions about  
22    lost earnings?

23    A.     Yes, when individual-level data is not available.

24    Q.     Okay. Is it reasonable to rely on government data  
25    about pay scales for federal employees?

1 A. Yes.

2 Q. Um, is it reasonable to rely on data from the  
3 Office of Personnel Management in determining, um, data  
4 such as annual leave, sick leave, and holidays?

5 A. For government employees?

6 Q. Yes.

7 A. Yes, it is.

8 Q. Is it reasonable to rely on government data to  
9 determine the value of pension benefits?

10 A. For government employees?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. And so you just testified that experts in  
14 your field often rely on government data and studies, is  
15 that right?

16 A. Yes.

17 MS. STRICKLAND: Let's go ahead and pull up Trial  
18 Exhibit -- this is Lettered-Exhibit AW. (On screen.)  
19 Okay.

20 Q. Are you familiar with this document?

21 A. I am, yes. This is the document we were referring  
22 to earlier about the overhead costs.

23 Q. Okay. Does this document state, "North Carolina  
24 Office of Indigent Defense Services"?

25 A. It does, yes.

1 MS. STRICKLAND: Okay, scroll down to the bottom  
2 of this page. (Scrolls.) Sorry, go up a little bit.

3 Is this titled "Fiscal Year '19 Private-Appointed  
4 Counsel Affected Pay Rate Study"?

5 A. It is, yes.

6 Q. Is it subtitled "Public Defense Attorney Overhead  
7 Rates and Access to Benefits"?

8 A. It is, yes.

9 MS. STRICKLAND: Okay, now scroll down to the  
10 bottom.

11 (On screen.)

12 Q. And in the bottom corner, is that the Great Seal  
13 of the State of North Carolina?

14 A. It is.

15 Q. Is this a North Carolina state government study?

16 A. I believe it is, yes.

17 Q. Okay. And I believe you testified earlier that  
18 you did review this document when assessing  
19 Dr. Albrecht's report?

20 A. I did.

21 Q. Okay.

22 MS. STRICKLAND: Let's turn to Page 1. (On  
23 screen.) Yeah.

24 Q. If you look in the top right corner, where it has  
25 the box, the headings state "Gross Pay versus Earnings"?

1 A. It does.

2 Q. And under that heading does the report state  
3 "Private-appointed public defense attorneys or  
4 contractors' gains does not equal earnings"?

5 A. It does.

6 Q. So is it fair to say that the purpose of this  
7 study was to measure the effective pay rate of  
8 private-appointed counsel in North Carolina?

9 A. That is one of the objectives of the study, yes.

10 Q. Okay, thank you.

11 So you testified earlier that you believed that  
12 Dr. Albrecht didn't provide a reasonable basis for his  
13 assumption about the overhead rates, is that right?

14 A. That's correct.

15 Q. Okay.

16 MS. STRICKLAND: Let's turn to Page 2 of the  
17 report. (Turns.) Go up a little bit. Okay.

18 Q. So is the heading for this "Private-Appointed  
19 Counsel Overhead Costs"?

20 A. It is, yes.

21 Q. So in the second paragraph, does it state "In  
22 2018, attorneys report their average per attorney per  
23 hour overhead costs was \$38.10 per hour and the median  
24 was \$21.72 per hour. The average affected hourly rate  
25 before benefits was \$15.62 and the median was \$30.75.

1       However, these low overhead rates were achieved by  
2       eliminating critical resources such as legal research  
3       pools that enable attorneys to provide competent  
4       representation."

5               Is that what the -- is that a fair statement of  
6       what it says?

7               MS. YOUNG:   Objection, the document speaks for  
8       itself.

9               THE COURT:   The document does speak for itself.  
10       At present it's not in evidence.

11              (Pause.)

12              MS. STRICKLAND:   Well I would move to admit this  
13       into evidence.

14              THE COURT:   No objection, is there?   Ms. Young?

15              (Pause.)

16              MS. YOUNG:   I mean I object, that the document is  
17       hearsay.

18              MS. STRICKLAND:   This document I believe was --

19              THE COURT:   Wait.   Wait.   Wait.   Please.

20              MS. STRICKLAND:   I apologize.

21              THE COURT:   You know it's not necessary to argue  
22       every point, if I need argument, I've allowed argument  
23       and I will accept it.

24              This is a government document, it's admitted for  
25       all the facts that it contains, not necessarily the

1 conclusions, but the facts. It's admitted, um, under  
2 8038, I believe. It's admitted and it will be Exhibit  
3 169.

4 (Exhibit 169, marked.)

5 THE COURT: Proceed.

6 MS. STRICKLAND: Thank you, your Honor. But --

7 MS. YOUNG: Your Honor, just one question about  
8 the admission? What is the full scope of the exhibit?  
9 Because we can't see -- is it just the PAC survey that's  
10 been admitted as Exhibit 169?

11 THE COURT: The document. The document is  
12 admitted.

13 MS. YOUNG: Well, your Honor, the document also  
14 contains the plaintiff's, um, her own questionnaire that  
15 she submitted to Dr. Albrecht and, you know, that  
16 document contains hearsay and we don't believe it should  
17 be admitted.

18 THE COURT: Well I understand that. It's only the  
19 government's document that is admitted. She's laid a  
20 foundation for the government document from the State of  
21 North Carolina, that study, that's what's admitted.

22 Does that make it clear?

23 (Silence.)

24 MS. STRICKLAND: Okay, thank you, your Honor, but  
25 just to clarify, um, I think this was an exhibit that

1 was admitted at Dr. Albrecht's deposition, but we're  
2 happy to rely just on the report for now. So, um, okay,  
3 great.

4 Q. So is it fair to say, based on that paragraph I  
5 just read you, that the report finds that these are low  
6 overhead rates that are achieved by eliminating critical  
7 resources such as legal research tools?

8 A. That's what the paragraph states. But it's a  
9 reflection of what their actual overhead rates are.

10 Q. Okay.

11 A. And that's what we're trying to model, what's  
12 actually being incurred.

13 MS. STRICKLAND: So let's turn to Page 5 of the  
14 report. (Turns.) So keep going, I think it's -- no.  
15 No. (On screen.) Yes, there you go.

16 Does this have the heading "Appropriate Overhead  
17 Costs"?

18 A. It does.

19 Q. Does the second paragraph of this report state the  
20 following: "IDS reviewed all the itemized overhead  
21 costs and identified 13 nonoptional overhead IMs at the  
22 hourly rate that public defense attorneys should cover,  
23 rents, malpractice insurance, office equipment, office  
24 expenses, telephone/internet, required annual programs,  
25 legal research tools such as Lexus or Westlaw, access to



1 one full-time support staff, and debt service or the  
2 interest on the fair employment credit. The average  
3 overhead costs for nonoptional items average \$46.72 an  
4 hour and the median was \$38.20 an hour."

5 Is it fair to say that this report is reflecting  
6 that this overhead rate is considered for nonoptional  
7 items?

8 A. That's the header on the table, but again our goal  
9 is to measure actual costs that have been incurred, and  
10 the first question that comes to mind is why are we not  
11 looking at your actual overhead costs, why are we  
12 relying on a survey to begin with? But given that we  
13 are relying on a survey, this is the table I was  
14 referring to earlier that listed, I believe, it's 13  
15 blue columns here.

16 And you say the largest ones, um, are the -- the 1  
17 FTE support staff and the staff benefits. An FTE  
18 support staff of \$3,479 a month, staff benefits of \$600  
19 a month, that's over \$4,000 a month for support staff.  
20 Whereas Dr. Albrecht used that number that's just off to  
21 the right, \$5,729 a month.

22 So \$4,000 a month -- even using this survey,  
23 \$4,000 a month plus, um, goes to the support staff, and  
24 the question is if you have support staff, then maybe  
25 that should be included, but if you don't, then I think

1     that's overstating overhead costs that you actually  
2     incurred and therefore overstating economic losses.

3     Q.     If the State of North Carolina identifies these  
4     overhead costs as appropriate overhead costs, do you  
5     have any reason to doubt that?

6     A.     I understand that they are calling these  
7     "nonoptional," but also it's very clear in this document  
8     that these are not the costs that people are actually  
9     incurring, this is what the State of North Carolina  
10    would like all the, um, public defense attorneys --  
11    excuse me, private public defense attorneys to incur.  
12    But that's not what's actually happening.

13           (Pause.)

14           MS. STRICKLAND: I just need a moment. I think  
15    I'm about done.

16           (Pause.)

17    Q.     And again, just to be clear, the overhead rate  
18    that you relied on was achieved by what the Office of  
19    Indigent Defense Services says is necessary to eliminate  
20    critical resources such as legal research tools that  
21    enable attorneys to provide competent representation, is  
22    that right?

23    A.     It was the right that -- it's the closest thing  
24    that this survey comes to what has actually been  
25    incurred, and that's what I'm trying to model. I would

1 prefer to have your actual costs that you've incurred,  
2 and I would use that, but since we don't have that, I'm  
3 using what I think is the best measure in this survey of  
4 what's actually been incurred.

5 Q. Yeah, and, um, just to clarify, you testified  
6 material that it is appropriate to rely on government  
7 data when nonspeculative individualized data is not  
8 available, is that right?

9 MS. YOUNG: Objection, asked and answered.

10 THE COURT: You have asked that, Ms. Strickland,  
11 I'm going to sustain that objection.

12 (Pause.)

13 MS. STRICKLAND: Just one more question, your  
14 Honor.

15 Q. All right. You testified earlier about FDO  
16 employees leaving the office. Were you given any data  
17 with reasons about why that was?

18 A. I don't recall seeing the reasons why they left.

19 Q. Okay.

20 A. In these calculations it doesn't really matter the  
21 reasons why somebody could leave in the future, it could  
22 be voluntary, it could be involuntary. For purposes of  
23 the calculations, we would just care whether they left  
24 or not.

25 MS. STRICKLAND: Okay, nothing further. Thank

1     you.

2             THE COURT:   Nothing further for this witness,  
3     Ms. Young?

4             MS. YOUNG:   I just have two quick questions, your  
5     Honor, with the Court's permission?

6             THE COURT:   Well of course.

7  
8     REDIRECT EXAMINATION BY MS. YOUNG:

9     Q.     Dr. White, do you think using total hours worked  
10    by plaintiff or OPM hours data is more precise in terms  
11    of economic loss calculations?

12            MS. STRICKLAND:  Objection, that's not within the  
13    scope of the report.

14            MS. YOUNG:   It was addressed on cross.

15            THE COURT:   He may answer.

16            MS. STRICKLAND:  I don't recall that ever being  
17    addressed.

18            THE COURT:   Well, she may have the answer to that  
19    question.

20    A.     I'm sorry, could you repeat the question?

21    Q.     Absolutely.

22            Do you think using total hours worked by plaintiff  
23    or OPM hours data is more precise for calculating  
24    economic loss?

25    A.     The total hours worked by plaintiff.  We like to

1 get numbers as specific to the plaintiff as possible.

2 Q. And what if anything are you aware of in terms of  
3 reimbursements for overhead costs for  
4 privately-appointed counsel?

5 A. I've seen some documents that show that some of  
6 the overhead costs are indeed reimbursed, I don't recall  
7 which ones they are, but some of them are.

8 Q. Thank you very much, Dr. White.

9 THE COURT: Nothing further, Ms. Strickland?

10 MS. STRICKLAND: I just have one follow-up  
11 question.

12 THE COURT: You may.

13

14 RECROSS-EXAMINATION BY MS. STRICKLAND:

15 Q. Does the indigent defense study rely on overhead  
16 costs that are reimbursed or overhead costs that come  
17 out of pocket?

18 A. I would have to look at the list of those that are  
19 reimbursed and whether that overlaps with the ones that  
20 are listed here in this exhibit.

21 THE COURT: And we have the study in evidence, so  
22 the Court can look at it. I think that's about it for  
23 this witness.

24 All right, you may step down. And, Mr. Martinez,  
25 you may resume the stand.

1           And, Ms. Gaudet, would you -- once he does, would  
2           you remind him he's still under oath.

3           MR. KOLSKY: Your Honor, we actually have, I  
4           think, one other quick witness that we'd like to call  
5           out of order, because he's not going to be available  
6           next week. His direct testimony should be less than 20  
7           minutes.

8           THE COURT: I think that's fine, I said you could  
9           call witnesses out of order. A new witness may be  
10          called. And the Clerk will swear the witness.

11          MR. KOLSKY: Thank you, your Honor. The  
12          government calls Joshua Carpenter.

13          (JOSHUA CARPENTER, sworn.)

14  
15          \*\*\*\*\*

16          JOSHUA CARPENTER

17          \*\*\*\*\*

18  
19          DIRECT EXAMINATION BY MR. KOLSKY:

20          Q.       Can you please state your full name for the  
21          record.

22          A.       My name is Joshua Brown Carpenter.

23          Q.       Where are you employed, sir?

24          A.       I work for the Federal Public Defender for the  
25          Western District of North Carolina.

1 Q. And what is your position there?

2 A. I'm the Appellate Chief.

3 Q. How long have you worked in that office?

4 A. So I've worked for the office since the summer of  
5 2012 and I've been the Appellate Chief since 2015.

6 Q. What was your title when you started at the  
7 Federal Defender's Office?

8 A. My title was "Assistant Appellate Attorney," and  
9 that technically is a Research and Writing Specialist  
10 for purposes of pay scales and what-not.

11 Q. So what did you do before starting at the Federal  
12 Defender's Office?

13 A. So after law school I spent a year at Covington  
14 Burling in D.C., spent a year after that clerking for  
15 Judge Wayne Michael on the Fourth Circuit, and then  
16 spent 3 1/2 years working in the Washington D.C. office  
17 of Gibson, Dunn & Crutcher.

18 Q. Why did you decide to join the Federal Defender's  
19 Office?

20 A. My plan after law school had always been to spend  
21 a few years at the firm to pay down the debt from school  
22 and then pursue a job that I was passionate about, and  
23 for me this job did that perfectly. I loved appellate  
24 practice and I loved the idea of representing indigent  
25 defendants, and the opportunity to do those two things,

1 while also practicing before the Fourth Circuit in which  
2 I clerked, was a perfect combination for me.

3 Q. Are you familiar with the Office's conversion of  
4 Research and Writing Attorneys to Assistant Federal  
5 Defenders in August 2018?

6 A. I am, yes.

7 Q. What if any was your involvement in that  
8 conversion?

9 A. So I was involved in some of the conversations  
10 about whether we should do it, including speaking with,  
11 um, Todd Watson of the Defender Services Office about  
12 the idea of conversion.

13 Q. Who is Todd Watson?

14 A. Todd Watson is an employee, I think with the  
15 Defender Services Office, he provides advice to Defender  
16 Offices on budgetary matters, case-related matters, and  
17 the like.

18 Q. Which attorneys were converted from Research and  
19 Writing positions to Assistant Federal Defenders?

20 A. My understanding is that ultimately both Jared  
21 Martinez and Caryn Strickland were converted at some  
22 point from Research and Writing to an Appellate -- an  
23 Assistant Federal Defender position.

24 Q. And what is your understanding of why they were  
25 converted?



1       A.       So the conversation we had with Todd Watson about  
2       whether to do this, um, sort of led us to the conclusion  
3       that he -- let me explain, that before --

4               MS. STRICKLAND:  Objection, hearsay.

5               THE COURT:  Yeah, it is hearsay.  Sustained.

6       Q.       Mr. Carpenter, I'm not going to ask about any, um,  
7       conversations that were made to you, but, um, can you  
8       describe your understanding of the reasons for the  
9       conversions to Assistant Federal Defenders?

10      A.       Yes.  My understanding is that before 2016 there  
11      has been an incentive for Defender Offices to limit the  
12      number of Assistant Federal Defenders based on the way  
13      the case-budgeting systems worked and to instead  
14      "smuggle," so to speak, lawyers into the Offices using  
15      the Research and Writing classification.  The budgetary  
16      system changed in 2016, which eliminated that incentive,  
17      and as a result it became up to the individual office  
18      whether to classify attorneys in which of those  
19      classifications.  My understanding is that we decided to  
20      make a conversion because it was in the financial best  
21      interests of the employees affected because the pay  
22      scale for the Assistant Federal Defenders literally tops  
23      out at a higher level than the pay scale for Research  
24      and Writing Specialists.

25      Q.       Are you familiar with an Appellate Assistant

1 Federal Defender position, um, a position announcement  
2 that was posted around August 2018?

3 A. Yes, I am.

4 Q. Who wrote the position announcement for that  
5 position?

6 A. So I wrote the substantive portion of it, um, I  
7 think our Administrative Officer, Bill Moormann, had  
8 provided some of the language for the technical  
9 requirements. But in terms of what the job functions  
10 would be, I drafted that component of it.

11 Q. And what were the duties or the job functions of  
12 that position?

13 A. So based on the way we were researching, um, the  
14 way the work flowed in the office, our appellate team  
15 was going to handle three, and continues to this day to  
16 handle three work streams, um, one was direct appeals,  
17 another is post-conviction work, and third is trial  
18 support and motions practice.

19 Q. How did those duties compare to Ms. Strickland's  
20 job duties at that time?

21 A. So based on the way things shifted that summer,  
22 those duties were exactly what her duties were going  
23 forward. So she was, um, shifted over to the Appellate  
24 Team under my supervision, along with Ann Hester and  
25 Jared Martin, um, and then the fifth person on the team

1 was what we were advertising for.

2 Q. What if any role did you have in the selection  
3 process for that Appellate AFD position?

4 A. So I reviewed all of the resumes, made  
5 recommendations on who to interview, um, and worked with  
6 the team committee to interview and to ultimately reach  
7 a consensus on who to offer the position to.

8 Q. Did JP Davis have a role in that selection  
9 process?

10 A. He did not.

11 Q. Did Ms. Strickland apply for that position?

12 A. She did submit an application, yes.

13 Q. Was she interviewed?

14 A. She was not. The reason was that she already had  
15 one of the positions, so there was no need to conduct a  
16 further interview, she was "already hired," so to speak.

17 Q. What if anything did you tell Tony Martinez about  
18 Ms. Strickland's interest in that position?

19 A. My recollection is that I told Tony that, um, I  
20 talked to Caryn at some point and explained that there  
21 was no need for her to apply for it, um, because she  
22 already had the position, um, and then so I told him I  
23 conveyed the information to her and that I didn't think  
24 we needed to interview her.

25 Q. At the time that Ms. Strickland was not selected

1 for an interview, did you know of any allegation of  
2 sexual harassment or discrimination or retaliation by  
3 Ms. Strickland?

4 A. I did not.

5 Q. Who was ultimately selected for the Appellate AFD  
6 position?

7 A. A woman named Melissa Baldwin.

8 Q. Mr. Carpenter, were you ever Ms. Strickland's  
9 supervisor?

10 A. I was.

11 Q. Approximately when was that?

12 A. I don't remember the exact date, but at some point  
13 in that summer, um, we transitioned the structure and I  
14 believe I became technically the supervisor for both her  
15 and Jared Martinez sometime in the late summer or fall.

16 Q. And how long did you --

17 THE COURT: Wait a second. Wait a second. I'm  
18 sorry. I just want to follow.

19 And the year? The summer of what year?

20 THE WITNESS: Oh, of 2018.

21 THE COURT: Thank you.

22 Q. And how long did your supervision of  
23 Ms. Strickland continue?

24 A. Until she left the office, which I think was  
25 March-ish of 2019.

1 Q. What type of work was Ms. Strickland doing while  
2 she was under your supervision?

3 A. She was doing the same things as the other members  
4 of the Appellate Team, so she handled some direct  
5 appeals. I remember her working on, um, **Jarvis Lopes** is  
6 one case, **Rangel Cornet** was another, **Bonn Stroop** was  
7 another, where she handled direct appeals matters. I  
8 know she did some trial support work in particular. I  
9 remember a case up here in Asheville had a really  
10 interesting question about American jurisdiction, where  
11 she worked for Mary Ellen Coleman or with Mary Ellen  
12 Coleman. And she also did a lot of work, when the First  
13 Step Act was passed, in December of 2018, identifying  
14 eventually eligible individuals and preparing some of  
15 those motions that were filed in early 2019.

16 Q. How did Ms. Strickland's job duties at that time,  
17 um, when she was working under your supervision, how did  
18 her job duties compare to the other attorneys that you  
19 supervised in the Appellate Group?

20 A. So her job duties, as far as I saw, were identical  
21 to the others.

22 Q. To what extent did Tony Martinez influence the  
23 work that was assigned to Ms. Strickland while she was  
24 working under your supervision?

25 A. He really didn't. He didn't sort of bother me on

1 the assigning basis.

2 Q. To what extent did JP Davis influence the work  
3 that was assigned to Ms. Strickland while she was  
4 working under your supervision?

5 A. He didn't at all.

6 Q. While Ms. Strickland was working under your  
7 supervision, was she invited to participate in moots or  
8 appellate arguments?

9 A. Yes, just like all of our team members.

10 Q. And did she participate in moots?

11 A. She did participate in some, yes.

12 Q. Particularly how many people participated?

13 A. So when I schedule moots I like to have at least  
14 four people, um, serving in the role of moot judge,  
15 sometimes five, because it's also the case that  
16 something happens in the last minute and one or two  
17 people have to drop off. So I like to have 4 or 5 on  
18 the panel signed up for the view.

19 Q. Did JP Davis ever participate in Appellate moots?

20 A. Yes.

21 Q. For how long has he been participating in  
22 Appellate moots?

23 A. He participated in Appellate moots from the time  
24 that we began. So I began in 2012, JP began a few  
25 months after me. He, along with a number of the other

1 trial lawyers, participated in moots simply because we  
2 didn't have enough people on our Appeals team to staff  
3 them, um, without helping the trial units, and JP was a  
4 person who had been willing from the beginning to assist  
5 in that capacity.

6 Q. Did Ms. Strickland ever tell you that she believed  
7 she was being sexually harassed by anyone in the office?

8 A. She did not.

9 Q. Did she base any, um, complaints with regard to  
10 Mr. Davis?

11 A. Yes, we had a conversation, I think it was in July  
12 of 2018, where she did complain about his supervision of  
13 her. It was kind of -- it was very reminiscent for me  
14 from my law firm days where I heard someone complaining  
15 about a, you know a partner who was hard to work with,  
16 um, get along well with, um, some complaints about  
17 micromanaging or scheduling or things like that. So,  
18 yes, she did voice those complaints to me.

19 Q. Were you surprised that someone would think  
20 Mr. Davis was a micromanager?

21 A. Well not especially, I've heard other people  
22 occasionally make that kind of complaint about him, so  
23 it didn't shock me.

24 Q. Did Ms. Strickland ever express to you an interest  
25 in transferring to the Asheville office?

1       A.       Um, I do recall, long before all of this happened,  
2       that she had mentioned that her, um, I think it was her  
3       fiance at the time, lived up in this area and she was  
4       interested in potentially, you know, maybe one day  
5       transferring, and I remember conveying to her that that  
6       could happen if she stuck around long enough. One of  
7       our trial attorneys had expressed interest in 2014, to  
8       the boss, in moving to Asheville and a few years later a  
9       spot finally opened up. So, yeah, I think I remember  
10      kind of saying "Yeah, if a spot comes open, maybe you'd  
11      be in a position to do that one day."

12               (Pause.)

13              MR. KOLSKY: No further questions.

14              THE COURT: And, um, whichever one of you is going  
15      to examine, any questions for this witness?

16              MS. STRICKLAND: Um, yes, your Honor, just a few.

17              THE COURT: You may.

18  
19      CROSS-EXAMINATION BY MS. STRICKLAND:

20      Q.       Did you just testify that Mr. Davis did not have  
21      any role in influencing the plaintiff's, my job duties  
22      during the conversion from RFW -- I'm sorry, R&W to AFD?

23      A.       So what I testified to was that after you were on  
24      the Appellate Team, he didn't have any influence on what  
25      I would assign.



1 Q. How about before then, did he have any influence?

2 A. Before that, yeah, I think he was one of your  
3 supervisors before that, yes.

4 MS. STRICKLAND: Okay, let's pull up exhibits --  
5 This is a -- this exhibit is admitted already as Exhibit  
6 16. Go ahead and scroll down so he can look at the  
7 e-mail chain. (Scrolls.) Let him just scroll through  
8 the whole thing. (Scrolls.)

9 Q. Are you familiar with this document?

10 A. Yes.

11 Q. Is this a chain of e-mails between you and JP  
12 Davis dated July 20th, 2018?

13 A. It is, yes.

14 Q. And does this e-mail state, "A quick follow-up  
15 since I realize I reacted a bit strongly on the phone"?

16 MR. KOLSKY: Objection, your Honor, this is  
17 outside the scope of direct.

18 MS. STRICKLAND: He testified that --

19 THE COURT: Wait. Wait. Wait a minute.

20 Now, um, it is, um -- we're going into the  
21 supervision. She may have it.

22 You may answer, Mr. Carpenter.

23 A. Yes, that is what the e-mail says.

24 Q. Is it fair to say that you had had a conversation  
25 with Mr. Davis on the phone prior to this e-mail?

1 A. Yes, it is.

2 Q. And Does JP Davis state, "My primary concern is  
3 that I am the only one who has communicated to Caryn  
4 that her actions, which were filable offenses, were in  
5 fact problematic"?

6 A. That is what the e-mail says.

7 Q. Does the e-mail state, "I feel a bit out in the  
8 wind here and I am going to have trouble working with  
9 her so long as I think she thinks she can lie to me and  
10 disobey me and no one will back me up"?

11 A. Yes, that is what it says.

12 Q. Does this e-mail state, "This is not really fair  
13 to jump on you as you are not in a great position to be  
14 chastising her"?

15 A. Yes, except it says "dump" rather than "jump."  
16 But, yes.

17 Q. Is it fair to say that Mr. Davis wished that  
18 someone besides himself would back him up and chastise  
19 me?

20 MR. KOLSKY: Objection, calls for speculation, it  
21 lacks foundation about what Mr. Davis was thinking.

22 THE COURT: Yeah, he can't testify to what  
23 Mr. Davis is thinking. The document is in evidence.

24 Q. Does this e-mail state, by Mr. Davis, "If she  
25 chooses to continue the fuck-off attitude, then at least

1 we know what we have"?

2 A. Um, I think, um, I'm not --

3 MS. STRICKLAND: Yeah, I think we need to scroll  
4 down to the next page.

5 (Scrolls.)

6 A. Oh, yes, I see that sentence. Yes.

7 Q. Do you think that it's appropriate for a  
8 supervisor to use words like "fuck-off attitude" in a  
9 work setting?

10 A. I mean I'm not a huge fan of it, no.

11 Q. I'm sorry, I didn't hear that?

12 THE COURT: "I'm not a huge fan of it, no."

13 A. Yes, that's what I said.

14 Q. Okay, thank you.

15 MS. STRICKLAND: Let's go up.

16 (On screen.)

17 Q. Did you respond to this e-mail on the evening of  
18 July 20th, 2018?

19 A. Yes.

20 Q. Did you state, "I have a game plan in mind for how  
21 to give her a chance, whether deserved or not, to redeem  
22 herself and return to being a productive employee. If  
23 it works, great. If not, we'll encourage Tony to  
24 respond appropriately."

25 A. Yes, that is what I said.

1 Q. By "encouraging Tony to respond appropriately,"  
2 did you mean to suggest some sort of adverse action  
3 being taken against me in the future?

4 A. Yeah, my "game plan" that I referred to in this  
5 would be you working under my supervision and being able  
6 to do the type of appellate work that you had expressed  
7 to me in earlier conversations that you were interested  
8 in doing. I thought that would give you a fresh start  
9 in the office, because I knew from our conversations  
10 that you weren't happy with your situation. But I also  
11 believed you had the potential to be a productive  
12 employee. So my game plan was to bring you over to the  
13 appellate team, give you an opportunity to do the work  
14 that you had expressed an interest in doing, and hope  
15 that allows you to reset and to flourish.

16 Q. So when you say the words "return to being a  
17 productive employee," do you mean to say you did not  
18 think I was a productive employee?

19 A. That wasn't my opinion, it was the opinion that JP  
20 was expressing, so I was sort of taking -- I mean I took  
21 everything that both of you told me in those  
22 conversations with a bit of a grain of salt knowing that  
23 I was only getting one side of the story from each of  
24 you. So, you know, I knew that there were concerns that  
25 there were problems and, you know, my view was maybe in

1 a fresh setting in the appeals scene, um, that you'd get  
2 past those and do good work.

3 Q. (Pause.) You testified earlier about the, um, the  
4 appellate AFD position, is that right? When that  
5 position was posted, was there an open full-time  
6 position in appeals at that time?

7 A. Yes, there was. Yes, we were restructuring to  
8 create one because what was happening at the time, as  
9 you probably remember, is that Caleb Newman had been  
10 doing -- had been hired on a contract position to do  
11 post-conviction work under Amendment 782, and then that  
12 contract is renewed to do post-conviction work under the  
13 **Johnson** decision, and so his contract was ending. And  
14 at the same time Ros Richardson, who had been diagnosed  
15 with cancer a few years before and had been doing  
16 appellate work, was about to transition out of the  
17 office because of her illness. And so the decision was  
18 made that we needed and had the capacity to add, um,  
19 that position to kind of -- merging essentially what had  
20 been the work Caleb had been doing and the work that Ros  
21 had been doing.

22 Q. Sir, I understand your testimony, but my question  
23 was did you have one FTE in appeals at the time, at  
24 least one?

25 A. Our FTEs were never divided, like trial and

1 appeals, in any formal way.

2 Q. So if there are staff meeting notes that say  
3 "Appeal FTE is 2.75 for having surviving with 1.75 FTE,"  
4 are you saying that's inaccurate?

5 A. Well that refers to the fact that we had 2 3/4s  
6 appeals employees, which would be me, Ros, and Ann, and  
7 when we're saying "surviving with 1.75," we're referring  
8 to the fact that because of Ros's cancer, she hadn't  
9 been able to work, and so her work was being covered in  
10 other ways. What was changing going forward is that we  
11 were formally moving the Research and Writing positions,  
12 which had kind of been under the trial-level like sort  
13 of floating positions into the fold of appeals to make  
14 the unit more structured.

15 Q. And those decisions were made in July and August  
16 of 2018, is that right?

17 A. Yes, that sounds right. I can't remember if the  
18 conversation -- when the conversations started. I know  
19 the initial conversation with Todd Watson had been, I  
20 think, several months before that, which had sort of  
21 planted the seed, and, yeah, I think the final decisions  
22 were made in July and August of 2018.

23 Q. So you testified earlier that it was in the best  
24 interest of the R&Ws to convert them to AFDs, is that  
25 right?

1       A.       So I think that was ultimately the decision that  
2       was made. I remember you and I had a conversation at  
3       one point where I suggested that you talk to our  
4       administrative officer, Bill Moormann, because he had  
5       informed me that it might be in your interest, as a more  
6       junior employee at a lower point in the pay scale, to  
7       stay in the R&W position, because at least he understood  
8       it to be the case that there could be a financial  
9       benefit to that, because the AFD pay scale tops out  
10      higher, um, and as he explained it to me is somewhat  
11      more structured. And so that at the lower level there  
12      could be a financial benefit to someone sticking as an  
13      R&W position until they gain some seniority. And so I  
14      remember suggesting you might want to consult with him  
15      about what would be in your own financial best interest.

16      Q.       Did you base that on any provision of the Docs  
17      manual?

18      A.       I based that on the advice of our administrative  
19      officer who handles budgetary and salary issues, that  
20      was well-outside of my purview.

21      Q.       Did you state in an e-mail, dated July 23rd, 2018,  
22      "It may well make sense to reward Jared's excellent  
23      performance by converting him to an AFD position given  
24      the higher top-end salary range"?

25      A.       Um, that sounds familiar, although if you had the

1 e-mail it might help to refresh my recollection a bit.

2 Q. Sure. All right. (Pause.) This is admitted  
3 Exhibit 39.

4 MS. STRICKLAND: Um, let's see here. I think we  
5 want to scroll down. (Scrolls.) Yes, all right. Yes.

6 Q. Are you familiar with this document?

7 A. Yes, this looks like the --

8 MS. STRICKLAND: Well just go to the top of the  
9 page. (Scrolls up.) And you can scroll all the way  
10 down to the bottom, if that would help. (Scrolls.)  
11 Yeah. Now go back up.

12 (On screen.)

13 Q. Are you familiar with this document?

14 A. Yes.

15 Q. Is this an e-mail from you to the management team?

16 A. Um, yes, it is.

17 Q. And is this e-mail dated July 23rd, 2018?

18 A. It is, yes.

19 Q. So does this e-mail state, "It may well make sense  
20 to reward Jared's excellent performance by converting  
21 him to an AFD position given the higher top-end of the  
22 salary range"?

23 A. Yes, and that reflects what I suggested a second  
24 ago, my understanding being that at the high end -- and  
25 Jared had 10-plus years of experience at that point, so



1     that at the higher end of the scale it would make sense  
2     that that was reflecting that advice that I had  
3     understood from Mr. Moormann.

4     Q.     Does it make a difference, um -- is the high end  
5     of the AFD pay scale different depending on how many  
6     years of experience you have?

7     A.     No, what Bill explained to me -- and again I  
8     didn't go to the document to let me verify this, but the  
9     explanation I was given was that the AFD scale is more  
10    rigid, um, and so that you take smaller jumps, whereas  
11    the R&W scale had bigger gaps and more ability to push  
12    someone up based on comparable experience. Um, again  
13    this is my understanding, so this is what the e-mail  
14    reflected.

15    Q.     And that's based on what Bill Moormann said,  
16    right?

17    A.     Correct.

18    Q.     Okay. Would it affect that if there was actually  
19    -- I was eligible for a promotion onto the next grade on  
20    an R&W scale before being converted?

21           MR. KOLSKY: Objection, lacks foundation.

22           THE COURT: Yeah, I don't know the foundation.  
23    Sustained.

24    Q.     Does this e-mail state, "JP and Bill, please add  
25    in anything I missed or any additional thoughts."

1 A. It does, yes.

2 Q. Is it fair to say that JP was part of these  
3 conversations about the conversion from R&Ws to AFDs?

4 A. He was at this point, yes. I believe he was on  
5 the phone call with Todd Watson, which is what this  
6 e-mail is making me think.

7 MS. STRICKLAND: Give me just a moment, please.

8 THE COURT: Of course.

9 (Pause.)

10 MS. STRICKLAND: That's all I have. Thank you.

11 THE COURT: No redirect, Mr. Kolsky?

12 MR. KOLSKY: One question, your Honor.

13 THE COURT: Go ahead.

14

15 REDIRECT EXAMINATION BY MR. KOLSKY:

16 Q. Mr. Carpenter, you were asked about Exhibit 16, a  
17 statement in your e-mail, um, to the effect of "If it  
18 works great, if not, we'll encourage Tony to respond  
19 appropriately."

20 My question is, did you ever encourage Tony to  
21 "respond appropriately," as you put it?

22 A. No.

23 MR. KOLSKY: No further questions.

24 THE COURT: All right.

25 Nothing further then for this witness?

1 (Silence.)

2 THE COURT: Are we going back to Mr. Martinez now?

3 MR. KOLSKY: Yes, your Honor.

4 THE COURT: All right, he may resume the stand and  
5 Ms. Gaudet will caution him -- remind him.

6 MS. STRICKLAND: Just one moment, your Honor,  
7 while we go and get the documents?

8 THE COURT: Yes, I understand.

9 (Pause.)

10 (Mr. Martinez resumes stand.)

11 THE CLERK: I'd like to remind you, sir, that you  
12 are still under oath.

13 Do you understand?

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16

17 DIRECT EXAMINATION BY MS. YOUNG: (Resumed.)

18 Q. Will you please state your name.

19 A. Anthony Martinez.

20 Q. Thank you, Mr. Martinez. Good morning.

21 A. Good morning.

22 Q. Mr. Martinez, you testified yesterday that after  
23 you inadvertently assigned Ms. Strickland to Mr. Davis's  
24 team, you called Ms. Strickland to apologize, is that  
25 correct?

1 A. Yes.

2 Q. And when did that phone call occur, approximately?

3 A. I believe the action was taken like on a Friday  
4 and I might have -- and I thought about it over the  
5 weekend and realized there was, you know, my  
6 inadvertence during the meeting, and so I wanted to say  
7 I called her like on a Monday or Tuesday. To my  
8 recollection.

9 Q. Thank you.

10 MS. YOUNG: Mr. Spears, can we please have  
11 Defendants' DF.

12 (On screen.)

13 Q. Mr. Martinez, are you familiar with this? Oh, we  
14 just lost the document. (Adjusts on screen.) Yes,  
15 there we go. Good.

16 Mr. Martinez, are you familiar with this document?

17 A. Yes, ma'am.

18 Q. And what is it?

19 A. This is a text from me on July 24th, 2018 at  
20 8:48 a.m. in the morning.

21 MS. YOUNG: Your Honor, defendants move to admit  
22 DF into evidence.

23 THE COURT: No objection?

24 MS. STRICKLAND: I object to the extent it  
25 contains hearsay.

1 THE COURT: Well what extent is that?

2 MS. STRICKLAND: I'm sorry?

3 THE COURT: What extent is that? It's all hearsay  
4 in the sense that there's a -- this is not the, um --  
5 this is an e-mail, I assume it's relevant, for the fact  
6 of the communication. So what within it would I  
7 exclude?

8 MS. STRICKLAND: Um, yes, your Honor. It just  
9 looks like there are follow-up text messages from JP  
10 Davis and we would contend those are hearsay.

11 THE COURT: Do you want the whole string,  
12 Ms. Young?

13 MS. YOUNG: No, your Honor, we just need the  
14 instruction on July 24th. Oh, sorry -- yes, July 24th,  
15 2018.

16 THE COURT: The instruction on that date is  
17 admitted as Exhibit 170.

18 MS. YOUNG: Thank you, your Honor.

19 (Exhibit 170, marked.)

20 Q. Mr. Martinez, why did you send Mr. Davis this text  
21 message?

22 A. Um, as I indicated, I thought about the  
23 inadvertence over the weekend and, um, I decided that,  
24 um, I needed to change the assignments and to make Jared  
25 the gatekeeper. And so I decided that the best way to

1     resolve this, um, in order to make and have  
2     Ms. Strickland feel comfortable and not have any work  
3     from Mr. Davis go to Ms. Strickland, I decided that the  
4     only way to do this, um, and not have anyone else in the  
5     office have any information about this and raise any  
6     eyebrows about Ms. Strickland's concerns, I then decided  
7     that I'm going to let Mr. Davis know -- well first of  
8     all, um, my instruction to him was, um, as I'm reading  
9     this text, "Please do not e-mail, text, or meet with him  
10    at all until further notice from me, I'm at the Calderon  
11    County Jail, we'll talk later."

12    Q.     Thank you. What if anything did you speak to  
13    Mr. Davis about on this day?

14    A.     And after he saw this text I spoke to him that  
15    evening and I advised him that, um, back on July the  
16    5th, when he had that meeting between myself,  
17    Ms. Strickland, and him, that when we had that private  
18    session between Ms. Strickland and myself, she indicated  
19    she felt uncomfortable with him as a result of the --  
20    what I called the "bike incident in the lobby," and  
21    that's why I instructed him not to e-mail, text, or meet  
22    with Caryn, um, or -- or not even to work -- not even  
23    to, um, have her provide any work for him.

24           And he then responded and he completely agreed, he  
25    said --

1 MS. STRICKLAND: Objection, hearsay.

2 Q. What was your impression of Mr. Davis's reaction?

3 A. He agreed.

4 Q. (Pause.) Did you and Mr. Davis have any  
5 conversations about Ms. Strickland's team assignment  
6 after this text message?

7 MS. STRICKLAND: Objection, hearsay.

8 THE COURT: Um --

9 MS. STRICKLAND: I'll withdraw it.

10 THE COURT: Very well.

11 Q. Um, Mr. Martinez, who is Kate Clark?

12 A. Ms. Clark is the -- was a former Director for the  
13 Defender Services office in the Administrative Office of  
14 the Courts.

15 Q. And did you speak with Ms. Clark regarding  
16 Ms. Strickland?

17 A. I did, yes, ma'am.

18 Q. And how many conversations did you have with  
19 Ms. Clark?

20 A. I had two conversations with Ms. Clark.

21 Q. When did those conversations occur?

22 A. The first one was on August 8th, 2018, and in that  
23 conversation, um, Ms. Clark called me and she indicated  
24 to me, um, that there were some concerns from an  
25 individual by the name of Nancy Dunham, who was the

1 Director of the Fair Employment Practice Office, about  
2 the interactions between JP -- Mr. Davis, I'm sorry, and  
3 Ms. Strickland, um, and I responded, because I was  
4 surprised with the phone call and shocked -- um, this is  
5 now August 8th, and I said, "Well I thought this whole  
6 issue and the interactions between Mr. Davis and  
7 Ms. Strickland were resolved back on July 5th." You  
8 know we resolved this as far as I was concerned. And,  
9 um, she said, "Well there's still concerns, and what I  
10 suggest to you is that you meet with her as soon as you  
11 can and, um, let her telework." And that was the extent  
12 of the conversation, there were no other details.

13 Q. Who else was on this call with Ms. Clark?

14 A. No one else was on that call.

15 Q. And how long was the call with Ms. Clark?

16 A. 2 minutes.

17 Q. Um, what details, if any, did Ms. Clark give you  
18 about the issues Ms. Strickland was having with  
19 Mr. Davis?

20 A. No details.

21 Q. What did you tell Ms. Clark about how you were  
22 handling this situation?

23 A. I told her that I thought it was handled overtly  
24 on July 5th and I expressed my surprise that this was  
25 resurrecting itself, um, and that was it.



1 Q. What if anything was discussed about the open  
2 appellate AFD position with Ms. Clark?

3 A. I don't recall -- I don't recall any conversation  
4 about the open appellate position with Ms. Clark.

5 Q. And you said you --

6 (Pause.)

7 THE COURT: Wait. Wait. Hold on a second. I  
8 have an issue with the Court Reporter.

9 (Pause.)

10 THE COURT: We'll take the morning recess at this  
11 time for one half hour, it's time for the recess. We'll  
12 take the recess until quarter after 11:00. We'll stand  
13 in recess.

14 THE COURT: All rise.

15 (Recess, 10:45 a.m.)

16 (Resumed, 11:15 a.m.)

17 THE COURT: And, Ms. Young, you may continue.

18 MS. YOUNG: Thank you, your Honor.

19 Q. Mr. Martinez, you testified before the break that  
20 you were surprised that Ms. Clark had called you, is  
21 that correct?

22 A. That's correct.

23 Q. And can you please explain why you were surprised?

24 A. Again, um, I believed I testified to this, um, I  
25 thought that the matter, in reference to the

1 interactions between Ms. Strickland and Mr. Davis, was  
2 resolved already on July 5th, so I was surprised to  
3 receive a call that someone from the AO, Nancy Dunham,  
4 from the Fair Employment Practices Office, who was  
5 concerned about the interactions as well, of what  
6 Ms. Clark indicated.

7 Q. And what did you do next after that call with  
8 Ms. Clerk?

9 A. I couldn't meet with her on that day, on August  
10 8th, because I had a schedule, I had scheduled some  
11 meetings, so I arranged to meet with her on August 9th,  
12 the next day.

13 Q. Arranged to meet with who?

14 A. With Ms. Strickland, I'm sorry, on August 9th.

15 Q. Thank you. And what was the purpose of the  
16 meeting with Ms. Strickland on August 9th?

17 A. To follow up with the phone call from Ms. Clark  
18 and find out what exactly was happening and what are the  
19 concerns.

20 Q. What do you recall about that meeting on August  
21 9th?

22 A. The first thing I recall, um, is that she was, um,  
23 concerned that she felt she was demoted by me having  
24 Jared Martin be the gatekeeper. I advised her that, um,  
25 and I was trying to explain to her my managerial

1 situation, and that is basically I had four trial teams  
2 with three attorneys in each team, I had 12 attorneys.  
3 Recently I had three R&Ws supporting 12 attorneys, but  
4 one of them left, one lawyer left around that time. So  
5 now it was 2 R&Ws, Research and Writing Specialists, um,  
6 supporting 12 attorneys.

7 Then her issue, um, and her expression to me that  
8 she was uncomfortable with Mr. Davis, um, I then, you  
9 know, assigned -- because I had four trial teams with  
10 two R&Ws, I assigned one R&W to two teams and one R&W to  
11 another two teams inadvertently, um, in the middle of a  
12 long meeting, and I inadvertently appointed her on  
13 Mr. Davis's team.

14 Q. And that -- and just to be clear, was that back in  
15 July?

16 A. That's correct. Um, and so I corrected that and  
17 made the two R&Ws just one unit basically and had  
18 Mr. Martin, Jared Martin, be the gatekeeper so as to  
19 ensure, um, that Ms. Strickland was protected. And on  
20 July 24th I told Mr. Davis not to basically do any work,  
21 give any work to, um, Ms. Strickland -- for her not to  
22 do any work for him rather. And so I was trying to do,  
23 from a managerial perspective, everything I could  
24 possibly do to make her feel comfortable. That's what  
25 we discussed on August 9th.

1           Another thing we discussed is I told her, during  
2           that meeting, she started saying that she felt  
3           threatened, she felt harassed, she mentioned. I then  
4           responded, I said, "Well at the last meeting we had on  
5           July 5th, I specifically asked you whether you were  
6           being sexually harassed and you said no," and she said,  
7           "Well I wasn't really using that language, I was trying  
8           to 'self-manage,' that's what I told you, and I didn't  
9           use that language, I didn't want to use that language  
10          yet," she says basically.

11          Now at this meeting they were talking about on  
12          August 9th, she surreptitiously recorded this  
13          conversation unbeknownst to me. And so that point that  
14          she made that she used the language of "self-managing,"  
15          she never did before, this is the first time I'm hearing  
16          this from her, she never mentioned it in previous  
17          conversations. And so, um -- so I was a little  
18          surprised with that.

19          Then she, um -- I expressed my concern with her  
20          going to the AO, the Administrative Office of the  
21          Courts, and, um, I wasn't trying to, um, deny her her  
22          ability to speak to people, but I was frustrated in that  
23          she was talking to people in the AO about a situation in  
24          our office where there was nothing really that the AO  
25          could possibly do, um, if there's any -- anything

1     happening like that nature in our office. And so I just  
2     felt frustration, I expressed my frustration that she  
3     went to the AO and not talked to me when I gave her the  
4     opportunity on July 5th to talk to me, to express to me  
5     specifically what exactly Mr. Davis was doing, um,  
6     previously to make her feel uncomfortable.

7             I then -- we talked about the organizational  
8     chart, um, I agreed that it had already been modified,  
9     that she would then report to Josh Carpenter, the  
10    Appellate Chief, and the Appellate Chief would report to  
11    me directly. She then expressed to me that she was  
12    under the impression that she would be an AFD, that she  
13    was expecting and she was advised by the Defender, the  
14    previous Defender, that she had an expectation of being  
15    an FPD by now. And I said, "Well I'm going to convert  
16    you, um, like within days, that's already in the works  
17    to make you an AFD."

18            She then expressed to me that she wanted to do  
19    exclusively appeals. I then told her "Well I can't  
20    commit to that yet, I need to speak to Mr. Carpenter to  
21    find out whether that's feasible institutionally or what  
22    the needs are within the organization, and I'll get back  
23    to you on that." And then she expressed a concern that  
24    again she wanted to feel safe and the only way she felt  
25    she could be safe is if she worked in Asheville, if

1     there was a change in her duty station, or telework.  
2     But I advised her, "Well I have no space, I'm giving you  
3     the answer on Asheville right now, that I have no space  
4     in Asheville," and "I do not have a telework policy,  
5     because it's inconsistent" -- and this is pre-covid,  
6     "inconsistent with our function, our defense function,  
7     we have to be" -- oh, I'm sorry.

8     Q.     Very good.

9             Is it inconsistent with the function of all AFPDs,  
10     does that include Research and Writing attorneys?

11     A.     Generally I'm talking about pre-covid.

12     Q.     Um-hum.

13     A.     Yes, that was the perception that we should be --  
14     our job is to be available to the District Court judges  
15     on short notice, and so that's the way, you know, all  
16     Defenders were working and everybody was coming in --  
17     and I'm not saying never, never, never, okay, I mean  
18     there were exceptions. If there was a health issue, an  
19     emergency, of course they were permitted to telework  
20     during it. But generally as a function, um, that was  
21     discouraged, to telework, because of our need to be, at  
22     a moment's call, in the District Court.

23     Q.     Did you tell Ms. Strickland you would look into  
24     the telework issue?

25     A.     I'm sorry, could you repeat that question?

1 Q. Did you tell Ms. Strickland you would consider the  
2 telework issue?

3 A. I was -- my recollection is that I said, "I'll  
4 look into it, I'll see what I can do." I didn't deny it  
5 at that moment. I just told her, "Look, I don't have a  
6 telework policy right now, but let me look into it."

7 MS. YOUNG: Mr. Spears, may we please have  
8 Defendants's Exhibit FE. (On screen.) Can I have FE-01  
9 and FE-02 side by side.

10 (Joint screen.)

11 MS. YOUNG: The document appears to be blurry, you  
12 might want to try -- could you try refreshing please?

13 (Pause.)

14 MS. YOUNG: Sorry, your Honor, we're just having  
15 some technical difficulties in the courthouse.

16 THE COURT: No, it's quite all right.

17 (Pause.)

18 MS. YOUNG: Perfect. Thank you, Mr. Spears.

19 Q. Mr. Martinez, are you familiar with this document?

20 A. I have two documents in front of me. I'm familiar  
21 with both of them.

22 Q. And what is this document?

23 A. It's, um -- well I'll go in order. The document  
24 to my right is an e-mail from Ms. Caryn Devens to me,  
25 dated August 10th, 2018, and the subject matter is

1 "Agreement from yesterday's meeting." The other  
2 document, to my left, is an e-mail from me, on August  
3 10th, "Soon after 11:40," um, and the subject matter is  
4 "Agreement from yesterday's meeting."

5 Q. And are these pages part of the same e-mail chain?

6 A. Yes.

7 MS. YOUNG: Defendants move to admit Exhibit FE  
8 into evidence.

9 THE COURT: No objection?

10 MS. STRICKLAND: Your Honor, I'm going to object  
11 and, um -- yes, your Honor. This is one that maybe  
12 requires a little bit of an explanation, if I may be  
13 heard?

14 THE COURT: Well it appears that the first page is  
15 your admission, so why shouldn't I admit that?

16 MS. STRICKLAND: Your Honor, it's our  
17 understanding that this is not an authentic document,  
18 this e-mail was not sent on August 10th, 2018. The only  
19 e-mail that's in the record, for example in our  
20 mediation supplement that we filed, is from August 17th,  
21 2018 where she sent -- it looks like a version of this  
22 e-mail. But this is not an authentic document.

23 THE COURT: Well I know you're not under oath, but  
24 what do you have to say about this? You didn't --  
25 you're saying --



1 MS. STRICKLAND: I never received this e-mail.

2 THE COURT: Well as I understand it, one of them  
3 is an e-mail you sent. You're saying you didn't send  
4 it?

5 MS. STRICKLAND: Yes, I -- no, your Honor, to  
6 clarify, I sent that e-mail. I never received an e-mail  
7 on August 10th, I did not hear anything back or receive  
8 any e-mail until August 17th, a week later, and those  
9 communications --

10 THE COURT: All right, no, wait a minute --

11 MS. STRICKLAND: Your Honor, I don't know if this  
12 is a draft, but it's not authentic.

13 THE COURT: Well so you say. At least I can admit  
14 your e-mail of August 10th, all right, because you admit  
15 you sent it and it's an admission. So I will admit  
16 that.

17 Then, um, doesn't his testimony authenticate it?  
18 I have a live witness who you can cross-examine who has  
19 just testified that later that same day, in response to  
20 -- I hear you say it, but it's not under oath, so it  
21 can't be part of the record, but that you didn't receive  
22 it. Now that's a little different. I have a witness  
23 say that he sent it. And so that satisfies the  
24 authenticity prong, that you have a witness who says he  
25 sent it and he sent it on August 10th.

1           Now your position is you didn't receive it, but I  
2       see no reason not to admit it against that challenge and  
3       I will admit the two documents -- no, we best keep them  
4       separate because you're only challenging the one on  
5       authenticity. Your e-mail to Mr. Martinez is 171. His  
6       e-mail back, which you challenge, is 172.

7           Go ahead, Ms. Young.

8           (Exhibits 171 and 172, marked.)

9           MS. YOUNG: Thank you, your Honor.

10          Q.       Mr. Martinez, what was your reaction upon seeing  
11       Ms. Strickland's e-mail dated August 10th?

12          A.       I was in shock and that's basically because of the  
13       third paragraph, um, when she says "This states here,"  
14       and I'm going to read it word for word, "As we  
15       discussed, these steps are necessary to protect myself  
16       from further sexual harassment by the First Assistant."  
17       That was the first time that she ever alleged that she  
18       was experiencing sexual harassment by the First  
19       Assistant.

20          Q.       Did she tell you, on August 9th, that Mr. Davis  
21       was sexually harassing her?

22          A.       No, she did not.

23          Q.       How did you respond to Ms. Strickland's e-mail on  
24       August 10th?

25          A.       I, um, I believe I received this on a Friday

1       afternoon? Sorry, Friday morning at 11:12. I -- I was  
2       working the whole day, I mean I had meetings, I reviewed  
3       it later on in the evening. And I believe it was a  
4       weekend, Monday, um, when I called Mr. Ishida, who was  
5       the Circuit Executive for the Fourth Circuit Court of  
6       Appeals, and I advised him that, "I have a concern here  
7       that we have an employee, a female employee that is  
8       making allegations of sexual harassment by the First  
9       Assistant -- my First Assistant, you know, what should I  
10      do?" You know, basically seeking direction. And I  
11      believe on the following day, Tuesday -- and I'm sorry  
12      that I don't have the dates in my head, I forwarded the  
13      e-mail from Ms. Strickland referencing sexual harassment  
14      to Mr. Ishida.

15      Q.       Thank you. And in this e-mail we have up here,  
16      why did you tell Ms. Strickland in response that she  
17      couldn't do exclusively appeals?

18      A.       Um, because I had discussed, on August 9th, I  
19      mentioned to her I have to -- when she expressed to me  
20      her interest and request to do only appeals, I advised  
21      her, "Well I have to double-check with the Chief of  
22      Appellate, Mr. Josh Carpenter, and make sure that he's  
23      okay with it." And so when I write to her, I confirm in  
24      there, um, that I had just talked to Josh, the Chief,  
25      and he wrote to me that he indicated to you -- so I make

1 reference to Josh Carpenter and just following up on the  
2 conversation I had with her on August 9th.

3 Q. And when did you get back to Ms. Strickland about  
4 her telework request?

5 A. I want to say August 17th, um, when I drafted, um  
6 -- I had gone back and forth with Mr. Ishida about going  
7 forward. Mr. Ishida, myself, reviewed the EDR plan, the  
8 Fourth Circuit EDR plan, and when we had firmed up what  
9 steps were going forward in the EDR process that we  
10 should take, um, my recollection is that I then included  
11 it in that letter to her that I was approving telework  
12 until the investigation process would be completed and  
13 that she was expected to come back to the office once  
14 that investigation was completed.

15 Q. Did the granting of the telework request, what if  
16 any effect did that have on Ms. Strickland's duty  
17 station?

18 A. It had no effect on her duty station. She was  
19 always welcome, if she needed to come back to Charlotte,  
20 that there was an office available in Charlotte, which  
21 she never took advantage of. And so it had no effect on  
22 her duty station.

23 Q. What if any personal knowledge do you have about  
24 where Ms. Strickland was working after you authorized  
25 her telework request? Or what was your understanding of

1 where Ms. Strickland was working after you authorized  
2 the telework request?

3 A. My recollection is that she was working in Tryon,  
4 North Carolina.

5 Q. Thank you. And what actions did you take to  
6 modify Ms. Strickland's supervisory change after this  
7 e-mail exchange?

8 A. It was modified to show, as per her request, that  
9 she would be working in the Appellate Unit, answering to  
10 the Appellate Chief, Josh Carpenter, and the Appellate  
11 Chief would be answering to me directly and not to  
12 Mr. Davis.

13 MS. YOUNG: Thank you.

14 Mr. Spears, can you please take down this exhibit.  
15 Can we please have Trial Exhibit 149. Thank you,  
16 Mr. Spears.

17 (On screen.)

18 Q. Mr. Martinez, is this the e-mail exchange you were  
19 mentioning earlier with Mr. Ishida?

20 A. Yes.

21 Q. So what actions did you take in response to the  
22 August 10th e-mail from Ms. Strickland, can you just --  
23 well strike that.

24 Can you explain a little more about your  
25 interactions with Mr. Ishida after the August 10th

1 e-mail?

2 A. After the August 10th e-mail, again we were going  
3 back and forth and we decided that we needed to proceed  
4 pursuant to Chapter 9 of the EDR plan for the Fourth  
5 Circuit and, um, it would be a claim of misconduct on  
6 the part of Mr. Davis, and then we went back and forth  
7 about responsibilities, that we would be appointing  
8 Heather Beam as the investigator. And Mr. Ishida was  
9 able to get Ms. Beam on board because he had contacted  
10 the District Court as to who they believed would be a  
11 good person to do the investigation and they suggested  
12 -- we have an HR specialist and her name is Heather  
13 Beam, and that's what she does. And both him and I just  
14 agreed that she would be best because she had no  
15 knowledge, personal knowledge of the facts, was not  
16 involved in anything, that I was involved early on and  
17 so it was important that I not be involved in the  
18 investigation. And as a matter of fact, around August  
19 14th, I recused myself from being involved in the  
20 process and investigation as a result of my involvement  
21 in the very beginning. And so those were the kinds of  
22 things that Mr. Ishida and myself were talking about.

23 Q. And who did you rely on to help you navigate the  
24 EDR process?

25 A. James Ishida.

1 Q. And why did you rely on Mr. Ishida?

2 A. Mr. Ishida is -- as the Circuit Executive at that  
3 time was the EDR coordinator under the EDR plan for the  
4 Fourth Circuit Court of Appeals, and so he would be the  
5 person who -- as a Unit Executive in the Fourth Circuit,  
6 I would depend on him as the EDR coordinator.

7 Q. Thank you. And turning to the investigation.  
8 What was your role in the investigation?

9 A. Again I had no role, I was, um -- I recused myself  
10 from involvement. The only role I had was to be  
11 interviewed by the investigator, Ms. Heather Beam.

12 Q. Why did you recuse yourself from the  
13 investigation?

14 A. As I've just testified, because of my prior  
15 involvement in the case and having met with  
16 Ms. Strickland and Mr. Davis, both Mr. Ishida and myself  
17 thought it would be prudent for me to recuse myself from  
18 being involved in any investigation, and have someone  
19 who was separated, so we can be sure there was a fair  
20 and impartial investigation in this case.

21 Q. And who was Ms. Beam reporting to during the  
22 pendency of the investigation?

23 A. She was not reporting to me, my understanding was  
24 she was reporting to Mr. Ishida.

25 Q. And to your knowledge did that reporting process

1 ever change during the investigation?

2 A. It never changed, ma'am, no.

3 Q. What were the nature of your discussions with  
4 Ms. Beam throughout the investigation?

5 A. The nature of my discussions with her, um, I know  
6 it took a little bit longer than anticipated and so at  
7 various times I would see her in the courthouse, and  
8 I never asked her, but she would give me an update,  
9 "Hey, Mr. Martinez, I'm still working on that report of  
10 the investigation." And so that was one aspect of it,  
11 and maybe I did that two or three times.

12 At the beginning of the investigation, I assured  
13 her that my office was open, that she could interview  
14 anyone in the office, if she needed to, um, either in  
15 the office or in her office. And if there's anything I  
16 could do to facilitate the investigation of our office,  
17 that she should please advise me and I would facilitate  
18 it.

19 Q. Did Ms. Beam interview you?

20 A. Yes, ma'am.

21 Q. And approximately when that did interview occur?

22 A. I don't recall the exact date, but I know it was  
23 early on in the investigation, um, after the  
24 investigation commenced.

25 Q. How many times did she interview you?



1 A. My recollection is I recall clearly once, but  
2 there might have been a second time.

3 Q. What if any discussions did you have about  
4 Ms. Beam's report before it was finalized?

5 A. What if -- can you repeat the question?

6 Q. Of course.

7 What if any discussions did you have about  
8 Ms. Beam's report before it was finalized?

9 A. Any discussions with anyone or with --

10 Q. Yeah.

11 A. The only discussion I can recall is that when  
12 Mr. Ishida, um, was giving the updates on the status of  
13 it, as the Unit Executive in this case, and the  
14 employer, um, and we did discuss that, um, he,  
15 Mr. Ishida, and Judge Gregory had received, um, one  
16 final draft or one final report, and he advised me that  
17 both he and Judge Gregory had decided that they needed  
18 more information in order to resolve it pursuant to, I  
19 think it was with Chapter 9, um, and wrongful conduct,  
20 that they needed to -- that the report needed to have  
21 recommendations, specific recommendations, and it  
22 didn't. And so they gave it back to Ms. Beam and  
23 Ms. Beam then provided them with that. And then there  
24 was a final final report and Mr. Ishida then advised me,  
25 "Okay, I have it." So that was the extent of the

1 conversation.

2 Q. Thank you. And why do you think you were made  
3 aware of the fact that the report needed to be  
4 supplemented?

5 A. As Unit Executive.

6 Q. And as Unit Executive, were you the one who  
7 forwarded the e-mails that started the investigation  
8 process?

9 A. Yes, I'm the first -- yes. My understanding, as  
10 far as I'm concerned, is the EDR commenced -- once I  
11 reported the allegations of sexual harassment made by  
12 Ms. Strickland, I reported it immediately to the Fourth  
13 Circuit Court of Appeals.

14 Q. And who else did you speak to about the  
15 supplementation of the report?

16 A. I don't recall speaking to anyone else.

17 Q. (Pause.) What discussions, if any, did you have  
18 with Mr. Davis about the report?

19 A. With Mr. Davis -- well, first of all, I had no  
20 knowledge of what was going on with the report, I mean  
21 the substance of it, that was strictly Ms. Beam, but I  
22 know Mr. Davis was anxiously awaiting the results of the  
23 report, um, and I understand where he was coming from.  
24 He felt that, um --

25 MS. STRICKLAND: Objection to the extent that this

1 is hearsay, the witness is testifying to his impression.

2 THE COURT: Well he can't testify to what  
3 Mr. Davis was thinking. I'll sustain it. I'll leave  
4 the business about him being anxious.

5 (Pause.)

6 Q. Now turning back to mid August of 2018. Why did  
7 you reclassify Ms. Strickland as an AFPD?

8 A. That reclassification was in the works, um, prior  
9 to her even requesting it because we were advised by  
10 members of the Defender Services --

11 MS. STRICKLAND: Objection, hearsay.

12 THE COURT: Yes, as to what the substance of the  
13 advice was. Sustained.

14 Q. Mr. Martinez, can you please explain your  
15 understanding of the benefits of reclassifying Research  
16 and Writing attorneys at the AFPD?

17 MS. STRICKLAND: Objection, hearsay.

18 MS. YOUNG: It's his understanding as the  
19 decision-maker.

20 THE COURT: It is. He may give us his own  
21 understanding.

22 A. My understanding is, um, there was a time when,  
23 um, prior to this conversion of Ms. Strickland to become  
24 an AFPD, that all -- and this is nationally, in all  
25 Defender offices around the country, that defenders were

1 not getting any credit for the work that the R&Ws were  
2 doing on cases, and they were attorneys, but they were  
3 not AFPDs. And so we received approval to then convert  
4 the R&Ws to become AFPDs so that now we can get credit  
5 for the work that they're doing on these cases. And  
6 getting credit for the work they were doing on these  
7 cases is important because the more credit we can get  
8 and the more work we can get, then we -- it results in  
9 the increase of FTEs as full-time employees. So we get  
10 more positions, more money in our budget. Our budget is  
11 driven by the amount of work that we receive.

12 So it is important for defenders, for all  
13 defenders to then convert the R&Ws, that are working  
14 hard but getting 0 credit for their work, to become  
15 AFPDs, so now they can get credit and we can increase  
16 our budgets.

17 Q. Thank you. And who else was reclassified, if  
18 anyone, at that time?

19 A. The other Research & Writing Specialist, Jared  
20 Martin.

21 Q. And I believe you mentioned Todd Watson a moment  
22 ago. Who is Todd Watson?

23 A. Todd Watson is, um, I call him the "Data Guru" in  
24 Defender Services, and he was the one that kind of was  
25 in charge of advising us as to the best way our offices

1 could take advantage of what they called a "weight  
2 measurement of study" of the work that we do.

3 Q. Pre the conversion, before the conversion process,  
4 um, what were the differences between an AFPD's work and  
5 an R&W's work?

6 A. The differences were basically an AFPD, um, is an  
7 Assistant Public Defender, meaning they can file a  
8 notice of appearance on a case, they can have their own  
9 cases, file their own motions. They represent the  
10 office, um, in relation to the DEA, the FBI. I mean  
11 they're just basically full-time, um, practicing and  
12 representing clients. Research and Writing Specialists  
13 are not permitted to have their own cases, they can make  
14 arguments in court, but under the supervision of an  
15 AFPD. They can't sign off on motions, AFPDs sign off on  
16 motions. They can't file a motion of appearance on  
17 behalf of a case, because they're not AFPDs. So that's  
18 the basic difference.

19 Q. How did the conversion change the role for the two  
20 attorneys who were previously Research and Writing  
21 Specialists?

22 A. It didn't change their roles because again the  
23 rationale behind it all is so we can get more credit for  
24 the work that they were doing, and of course it is a  
25 promotion in terms of financial for them because then,

1 over the long term, their increases that they receive  
2 would be much higher than they would have received as a  
3 Research and Writing Specialist.

4 Q. And once that change in title, could they have  
5 handled their own cases at that point if they were ready  
6 to do so?

7 A. If the Defender -- if I decided that, yes, they  
8 were ready, then they can become an FPD -- well not an  
9 FPD -- I mean an Assistant FPD, but they can hold their  
10 own cases. But that determination is up to the  
11 Defender.

12 Q. Thank you. Who else was involved in effectuating  
13 Ms. Strickland's conversion to an AFPD?

14 A. Bill Moormann is the only other person.

15 Q. And what role did Mr. Moormann play in processing  
16 AFPD conversion for both Ms. Strickland and Mr. Martin?

17 A. Will Moormann, um, Mr. Moormann is the  
18 Administrative Officer of the organization, and so, as  
19 the Administrative Officer, he would do all the  
20 paperwork basically.

21 Q. Who calculated what pay Ms. Strickland was  
22 eligible for on the AD scale at the time of her  
23 conversion?

24 A. Mr. Moormann did the initial calculation and then  
25 ran it by me.

1 Q. And how did Ms. Strickland's pay change, when she  
2 was converted to an AFPD role, if at all?

3 A. Her pay range did not change at all.

4 Q. At the time of the conversion, what did you think  
5 about Ms. Strickland's eligibility for a potential  
6 salary increase on the GS scale?

7 A. I had no knowledge of her potential salary  
8 increase on the GS scale. I had no knowledge of that.

9 Q. Then how did you become aware when an employee was  
10 eligible for a promotion on the GS scale?

11 A. Mr. Moormann would advise me.

12 Q. And on the AD scale?

13 A. Mr. Moormann would advise me.

14 Q. At the time of the conversion, what did you think  
15 about Ms. Strickland's eligibility for a potential  
16 salary increase on the AD scale?

17 A. I'm sorry, could you repeat that question again?

18 Q. Sure.

19 At the time of the conversion, what did you think  
20 about Ms. Strickland's eligibility for a potential  
21 salary increase as part of the conversion process and  
22 moving over to the AD scale?

23 A. My understanding is that we capped her out, we  
24 could not give her any more money than what we gave her.  
25 As a matter of fact, really based on her level of

1     experience, she should have been making less money,  
2     \$6,000 less, but because of the Red-Circle Rule in the  
3     Docs manual, we were able to give her the salary she was  
4     making before, as an R&W, and keep her at the same  
5     salary and not decrease it. But I was maxed out, I  
6     could not give her any more money.

7     Q.     And what is this "Red-Circle Rule"?

8     A.     The "Red-Circle Rule" is when you convert someone  
9     to a different position, a federal employee within the  
10    same agency, if when they're converted the conversion  
11    causes them to make less money, than the Red-Circle Rule  
12    allows me, as a Unit Executive, to allow them to make  
13    the same money they were making prior to the conversion.  
14    But now you're limited, I cannot give that individual  
15    any more money than what they were making before the  
16    conversion.

17    Q.     Thank you. At this time in mid August 2018, how  
18    were you handling performance reviews for employees?

19    A.     I wasn't generally giving them any performance  
20    reviews for employees.

21    Q.     Did you have any policy that you were following  
22    with respect to --

23    A.     Generally I would max people -- I would max all my  
24    staff to the largest maximum I could possibly give them  
25    going forward, and there were some people I would give



1 feedback to, particularly the younger attorneys who  
2 would be looking for feedback. But other than that,  
3 that was it.

4 Q. At the time of the conversion, what was your  
5 understanding of whether Ms. Strickland was ready to  
6 handle her own caseload?

7 A. We had now reached a point -- she had just been  
8 converted, so we didn't have a meeting yet, um, but to  
9 discuss whether she could take on her own cases, but  
10 honestly, um, based upon that e-mail that she sent after  
11 we, um, divvied up Mr. King's cases on the **Dixon** trial,  
12 um, and we asked her -- and I gave her -- we gave her,  
13 um, the team leaders all agreed that she should get four  
14 or five cases -- and I don't recall the exact number,  
15 but they were the least difficult cases, they were  
16 several supervised release and reentry cases that had  
17 already been resolved, and she e-mailed me back and said  
18 she could not handle those, that she was too busy. And  
19 that weeks before that, she had volunteered to second  
20 chair the **Dixon** trial, who -- Mr. Dixon was facing very  
21 serious federal penalties with the possibility of being  
22 sent to prison for the rest of his life, that she was  
23 energetically volunteering to do that.

24 So then I removed her from that case and after the  
25 removal, now that Mr. King is leaving, I have to divvy

1 out his cases, and I was asking her to help with that,  
2 um, and she said she was too busy. So I felt that that  
3 really indicated that she was not much of a team player,  
4 because culturally, and in the 35 years that I had been  
5 in the office as a Defender, it was within our culture  
6 that when one person is down, the other people would  
7 pick them up.

8 MS. STRICKLAND: Your Honor, this repeats prior  
9 testimony, asked and answered.

10 THE COURT: Actually the objection is appropriate  
11 at this time, it does.

12 Now I'm a little unclear, sir, as to the  
13 chronology, and that may make a difference here.

14 So looking at my notes, um, you, um, get this  
15 e-mail from her as to what was agreed at the prior  
16 meeting on August 10th, and that's -- that's, as you've  
17 testified, the first reference you have to sexual  
18 harassment and you do various things.

19 Now immediately prior to that e-mail, in the days  
20 immediately prior to August 10th, did you feel she was  
21 ready to handle her own caseload? Now you've averted to  
22 it, but Ms. Young asked you a question and I'm simply  
23 tagging onto it a specific time period, the days just  
24 before August 10th.

25 THE WITNESS: Well what I testified to is, um,

1     Number 1, I had not consulted -- my procedure, um, what  
2     I would do is consult with other supervisors that have  
3     dealt with her, and other employees, to see if she's  
4     ready to handle cases. I had not done that.

5           THE COURT: All right. So that's your answer.

6           THE WITNESS: I'm sorry?

7           THE COURT: Go ahead, finish your answer.

8           THE WITNESS: But as far as -- well I'm concerned,  
9     I don't believe she was ready.

10          THE COURT: Thank you.

11          But then, after the e-mail and as you've  
12     testified, you permitted her, um, on August 17th, to  
13     telework. Now she couldn't handle her own cases if she  
14     was teleworking, could she?

15          THE WITNESS: Yes, if, you know, like, for  
16     example, even during covid there were many FPDs who had  
17     their own cases and they were teleworking, they would  
18     have to come into the duty station and work, um, and go  
19     to court, um, but they could telework. So there was  
20     nothing preventing her from teleworking here and having  
21     her own cases.

22          THE COURT: Thank you.

23          Go ahead, Ms. Young.

24          MS. YOUNG: Thank you, your Honor.

25     Q.     Mr. Martinez, what role, if any, did Mr. Davis

1 have in Ms. Strickland's conversion to an AFPD role?

2 A. No role.

3 Q. And what role, if any, did Mr. Davis have in any  
4 decision regarding Ms. Strickland's pay?

5 A. No role.

6 Q. And at the time of the conversion, who was  
7 Ms. Strickland's direct supervisor?

8 A. Josh Carpenter.

9 Q. And just to be clear, when did Mr. Davis get  
10 removed from Ms. Strickland's chain of command?

11 A. It was around August 9th. But I'm not sure of the  
12 exact date.

13 Q. Thank you.

14 And then how much information did you have at this  
15 time about Ms. Strickland's allegations of quid-pro-quo  
16 harassment regarding the e-mail --

17 A. Are you talking about August 9th?

18 Q. At the time of the conversion. Sorry. Actually,  
19 strike that question.

20 (Pause.)

21 Q. Mr. Martinez, what was your role in mediation?

22 A. My role basically was as the employer and, um, on  
23 occasion the mediator, Mr. Edward Smith -- Ed Smith  
24 would contact me. I know early on there was a  
25 conversation I had with him about, um, whether -- and I

1 don't know, I don't recall the specific details, but it  
2 was something about possibly if she could come -- if  
3 Ms. Strickland could come back to the office and do  
4 exclusively appeals, was that possible? And things of  
5 that nature. So it was as an employer, um, that was my  
6 role, um, throughout the mediation process.

7 Q. And how many conversations did you have with  
8 Mr. Smith during the mediation process?

9 A. Well my recollection might have been anywhere from  
10 3 to 5 conversations.

11 Q. And what impact, if any, did your conversations  
12 with Mr. Smith have on what you were willing to offer  
13 Ms. Strickland to keep her at the Federal Defender's  
14 Office?

15 A. He was a very good mediator, very professional, he  
16 really went out of his way to try to resolve this  
17 matter, um, and so much so that, um, towards the end of  
18 the mediation I then, um, advised Mr. Smith, you know,  
19 "What do I need to do to" -- "What can I do to resolve  
20 this?" And, um, I guess in that conversation I felt  
21 that this was -- this was all the way towards the end of  
22 the mediation, and I said, "Then you know what I'll do?  
23 If this will resolve this, um, this EDR, I will give her  
24 my office," which is not really my office, "in  
25 Nashville." And so I offered that and agreed to that in

1 an attempt, a last-ditch effort to try to resolve the  
2 EDR.

3 Q. And you testified it wasn't really your office,  
4 what did you mean by that?

5 A. Well it was shared. It was an office that I  
6 didn't have really any privacy. I had to share it. If  
7 there was an intern in the office, I had to share with  
8 the intern. If an IT person came in, they would come in  
9 through the EDR office. Um -- but I had a computer  
10 there. And if, um --

11 Q. And why didn't you offer Ms. Strickland your  
12 office space sooner in Nashville?

13 A. I'm the Defender and I needed to manage and  
14 supervise that office, and it was growing. I needed an  
15 office.

16 Q. How did the mediation conclude?

17 A. I found out, um, that, um -- and I forget who  
18 advised me, to be honest, that Ms. Strickland had agreed  
19 to, um -- first there was a letter that she was ending  
20 the EDR process and that she -- and then there was some  
21 other indication that she was being transferred to  
22 another agency within the Fourth Circuit.

23 Q. Thank you. And what if any action did you take to  
24 effectuate that transfer?

25 A. I think I signed a document, a cross-agency

1 document that I needed to file as the Unit Executive.

2 Q. Thank you. And when did you first receive a copy  
3 of the final investigation report?

4 A. I don't really recall the date, but April, March  
5 or April of 2019 comes to mind.

6 Q. And who did you speak to about the final report  
7 once you received it?

8 A. Mr. Ishida.

9 Q. And what do you recall about those conversations?

10 A. My recollection is basically what the findings  
11 were.

12 MS. YOUNG: Mr. Spears, can we please have Trial  
13 Exhibit 7.

14 (On screen.)

15 Q. Mr. Martinez, are you familiar with this document?

16 A. Yes, ma'am.

17 Q. When did you first speak to Mr. Ishida about this  
18 letter of counseling, if at all?

19 A. Well as, um, the letter indicates, um, in the  
20 first paragraph, "I attended the Fourth Circuit's  
21 Workplace Conduct Conference in Richmond, Virginia," I  
22 want to say several weeks before the date on this -- on  
23 this letter.

24 Q. And what was your impression of the conversation?

25 MS. STRICKLAND: Objection, hearsay.

1 MS. YOUNG: It says "understanding."

2 THE COURT: Impression of the conversation with  
3 Mr. Ishida, is that your question, Ms. Young?

4 MS. YOUNG: That's correct. Yes, your Honor.

5 THE COURT: Well it is hearsay. So I will sustain  
6 it.

7 Q. What was your reaction to the conversation with  
8 Mr. Ishida?

9 A. My reaction was, um, he was giving me --

10 MS. STRICKLAND: Objection, hearsay.

11 THE COURT: No, no, he can tell his reaction.

12 What was your reaction to what he had to say?

13 THE WITNESS: My reaction was I appreciated him  
14 giving me a heads-up basically that this letter was  
15 forthcoming.

16 Q. And what was your reaction to this letter?

17 A. Um --

18 Q. Actually we can strike that.

19 All right. What was your understanding, at the  
20 time you received this letter, about whether there was a  
21 finding of wrongful conduct against you?

22 A. Based upon -- I mean the letter itself makes a  
23 finding that there's no misconduct on my part.

24 MS. STRICKLAND: Objection, your Honor, misstates  
25 the question.



1           THE COURT: The question clearly called for a  
2       hearsay answer and that's what his view is. The  
3       letter's in evidence. It speaks for itself. That may  
4       stand.

5       Q.     Um, what if anything -- actually strike that.

6           MS. YOUNG: Mr. Spears, can you please take down  
7       this exhibit. (Removes.) Thank you.

8       Q.     Mr. Martinez, what actions did you take after  
9       receiving this letter of counseling?

10      A.     As a result of this letter, then I did an oral  
11     verbal counseling with Mr. Davis.

12      Q.     And what did that counseling entail?

13      A.     It entailed his, um, electronic communications in  
14     this situation with Ms. Strickland and other members of  
15     his staff and, um, I advised them that some of the  
16     electronic communications were, um, the wording was a  
17     little unprofessional and that it could be more  
18     professional. And so that was basically -- you know how  
19     to address other employees in the office, especially as  
20     a First Assistant, and what language you use, um, in an  
21     e-mail is important, and that that language should be  
22     professional. That's basically what we reviewed.

23      Q.     And why was some of the language unprofessional in  
24     your view?

25      A.     Well there was some, um, profanity that was not

1 addressed to any particular individual, but I just made  
2 reference to some profanity that was not professional in  
3 an e-mail in an office.

4 Q. And what did you say to Mr. Davis about  
5 Ms. Strickland during the counseling meeting, if  
6 anything?

7 A. The focus of the counseling was strictly on his  
8 communications within the office and how they should be  
9 a little bit more professional.

10 Q. While you were serving as a federal defender, did  
11 anyone else have authority over personnel decisions such  
12 as terminations, promotions, pay adjustments, um,  
13 besides you?

14 A. No.

15 Q. And what was your understanding of your role as  
16 Unit Executive in terms of complying with the presiding  
17 judicial officer's order resulting from any final EDR  
18 hearing?

19 A. My understanding is that if a judicial officer,  
20 pursuant to the EDR plan orders, or whatever they order,  
21 then I should be -- make myself in compliance with that  
22 request or order from the judicial officer.

23 Q. Um, to wrap up, Mr. Martinez, did you ever take  
24 any action against Ms. Strickland because you wanted to  
25 punish her for reporting alleged sexual harassment?

1 A. No, ma'am.

2 Q. Did you ever take any action against  
3 Ms. Strickland because of her gender?

4 A. No, ma'am.

5 Q. And did you ever treat Ms. Strickland less  
6 favorably than any other employees who raised complaints  
7 against the office?

8 A. No, ma'am.

9 Q. And did you ever reduce Ms. Strickland's pay?

10 A. No, ma'am.

11 (Pause.)

12 MS. YOUNG: Your Honor, the government passes the  
13 witness.

14 THE COURT: Ms. Strickland, do you wish to examine  
15 this witness?

16 MS. STRICKLAND: Yes, your Honor. Thank you.

17 THE COURT: You may.

18

19 CROSS-EXAMINATION BY MS. STRICKLAND:

20 Q. Mr. Martinez, you previously served as the Federal  
21 Defender for the Western District of North Carolina, is  
22 that right?

23 A. Yes, ma'am.

24 Q. How many terms did you serve as Federal Defender?

25 A. One term.

1 Q. Did you apply for reappointment for a second term  
2 as Federal Defender?

3 MS. YOUNG: Objection, outside the scope.

4 THE COURT: Well it's not that it's outside the  
5 scope, it's that it is irrelevant. Sustained.

6 Q. Did you participate in plaintiff's, my job  
7 interview for a position at the Federal Defender's  
8 Office?

9 A. As I testified, I participated from Chattanooga,  
10 Tennessee via skype.

11 Q. Was it your view that I was the best candidate for  
12 the position?

13 A. Yes.

14 Q. Did plaintiff, my offer letter state that I was  
15 being hired as a Research and Writing Attorney with the  
16 expectation of transitioning to an Assistant Defender  
17 position?

18 A. That letter was signed by Ros Richardson, who was  
19 the Defender at that time. I was not the Defender.

20 Q. That's not my question. My question is did the  
21 offer letter state that I was being hired as a Research  
22 and Writing attorney with the expectation of  
23 transitioning to an Assistant Defender position? That  
24 is my question.

25 A. Yes, the letter states that, yes, ma'am.

1 Q. Okay, thank you. Did you review my resume when I  
2 was hired?

3 A. Yes, ma'am.

4 Q. To your recollection did I have prior experience  
5 as a law clerk for a state Supreme Court Chief Justice?

6 A. Yes, ma'am.

7 Q. Did I have prior experience as a law clerk for a  
8 federal District Court judge?

9 A. Yes, ma'am.

10 Q. Did I have prior experience as a law clerk for a  
11 judge on the Second Circuit Court of Appeals?

12 A. Yes, ma'am.

13 Q. Did I have prior experience as a Supreme Court  
14 Fellow?

15 A. Yes, ma'am.

16 Q. Was I recommended to you by Kate Clark?

17 A. Yes, ma'am.

18 Q. And you testified on direct that Kate Clark was  
19 the head of the Defender Services Office and the  
20 Administrative Office of the U.S. Courts, is that right?

21 A. Yes, ma'am.

22 Q. Is the Defender Services Office involved in the  
23 work of Federal Defender Offices nationwide?

24 A. Can you repeat that question, ma'am?

25 Q. Is the Defender Services Office involved in the

1 work of Federal Defender Offices nationwide?

2 A. They conduct training, but not involved in the  
3 work.

4 Q. But they're part of the Administrative Office of  
5 the U.S. Courts, isn't that correct?

6 A. Yes, ma'am.

7 Q. Is it fair to say that Kate Clark would be a good  
8 source of a recommendation for this type of work?

9 A. Many Defenders would not agree to that. I  
10 wouldn't agree with that.

11 Q. Was Kate Clark the head of DSL?

12 A. Yes.

13 Q. Okay. You specified earlier that when you were  
14 hired as Federal Defender, you wanted to make changes to  
15 the organizational structure of the office, is that  
16 right?

17 A. Yes, ma'am.

18 Q. Did you do any due diligence about understanding  
19 what was going on in the office when you were hired  
20 there?

21 A. Yes, ma'am.

22 Q. Were you aware that the office was in transition  
23 from a Community Defender to a Federal Defender office  
24 at that time?

25 A. At which time?

1 Q. When you were hired.

2 A. Yes, ma'am.

3 Q. Are you aware of --

4 THE COURT: Wait a minute. Let me interrupt  
5 because I don't know what a "Community Defender" is,  
6 sir, tell me what it is?

7 (Silence.)

8 Q. Would you like to explain that, Mr. Martinez?

9 THE WITNESS: Yes, your Honor.

10 A "Community Defender" is, I believe out of the 91  
11 districts there might be 15 that are Community  
12 Defenders. A "Community Defender" is not a federal  
13 agency, it's a nonprofit organization, they have a  
14 board. So the CDO, "Community Defender Organization,"  
15 is run by a board. The employees don't have federal  
16 benefits, they're not federal employees. As opposed to  
17 an FDO, a "Federal Defender Organization," um, which is  
18 a federal agency with federal benefits. So that's  
19 basically, um, the difference between the CDO and an  
20 FDO. And the FDO works under the Circuit Court of  
21 Appeals. CDOs again are strictly nonprofit  
22 organizations.

23 THE COURT: Thank you.

24 Go ahead, Ms. Strickland.

25 MS. STRICKLAND: Thank you, your Honor.

1 Q. You worked in a -- I apologize. You worked in a  
2 CDO previously, did you not?

3 A. Yes, ma'am.

4 Q. Are CDOs covered by Title VII to your knowledge?

5 A. I have no knowledge.

6 Q. You have no knowledge.

7 Is it your understanding that the District Court  
8 judges in the District vote on whether an office should  
9 be a Community Defender or a Federal Defender Office?

10 A. I have no knowledge of that.

11 MS. YOUNG: Objection, relevance.

12 MS. STRICKLAND: This goes to, um --

13 THE COURT: Well wait a minute. Wait a minute.  
14 He has no knowledge, so it's moot. Let's move on.

15 Q. Are you aware of public testimony from Judge Max  
16 Cogburn stating that this office was "a mess in need of  
17 a change"?

18 MS. YOUNG: Objection, relevance.

19 MS. STRICKLAND: May I be heard?

20 THE COURT: Not yet. The --

21 Had the transition completed before you became the  
22 Federal Defender, sir? You mentioned a Mr. Richardson,  
23 and I understood him to be a Federal Defender -- the  
24 Federal Defender. So had the transition completed at  
25 least in form?



1           THE WITNESS: Yes, your Honor. And to be  
2 specific, so when Ms. Ros Richardson was the Interim  
3 Defender, she was previously the CDO Defender, and when  
4 the conversion occurred to an FDO, a federal agency, she  
5 stayed as the Interim Defender when Ms. Strickland was  
6 interviewed. And then I was appointed after that, um,  
7 by the Circuit Court of Appeals.

8           THE COURT: Thank you. Thank you. And it's a  
9 "she," Ms. Richardson?

10          THE WITNESS: Yes, your Honor.

11          THE COURT: Now, um, Ms. Strickland has just  
12 referenced some statement by a judge. Just "Yes" or  
13 "No," are you familiar with that statement?

14          THE WITNESS: Can counsel repeat the question?

15          THE COURT: Yes.

16 Q. Are you aware of public testimony from Judge Max  
17 Cogburn stating this office was "a mess in need of a  
18 change"?

19 A. I have no knowledge of him stating -- using the  
20 word that it was a "mess." I have no knowledge of that.

21 Q. So reading that testimony was not part of your due  
22 diligence when you came to this office?

23 A. I read the testimony, but my recollection is that  
24 I never saw a word about the office being a "mess."

25 Q. Are you aware that Judge Cogburn testified that

1 the supervisors in the office were not qualified for  
2 their positions?

3 A. I don't recall that in his testimony.

4 Q. Do you recall that Judge Cogburn testified that JP  
5 Davis would not have even qualified for the CJA panel  
6 because he had only served as second chair on one  
7 criminal case?

8 A. I don't recall that testimony.

9 Q. But you did read the testimony, right?

10 A. Correct.

11 Q. To your knowledge had JP Davis ever served as  
12 first chair on a criminal jury trial when he became the  
13 First Assistant of the FDO?

14 MS. YOUNG: Objection, relevance.

15 THE COURT: Well let me be clear on this. Who  
16 appointed him First Assistant, if we know, Mr. Martinez?

17 THE WITNESS: He was the First Assistant under the  
18 CDO and I appointed him under the FDO.

19 THE COURT: Thank you.

20 THE WITNESS: I believe Ros Richardson appointed  
21 him under the CDO, I believe.

22 THE COURT: All right.

23 And you may have your question, Ms. Strickland,  
24 you may ask this witness about what he knew about  
25 Mr. Davis's qualifications.

1 MS. STRICKLAND: Thank you, your Honor.

2 Q. To your knowledge had JP Davis ever served as  
3 first chair in a criminal jury trial when he became  
4 First Assistant?

5 THE COURT: Well, wait a minute, I'm going to  
6 sustain that. The time reference has got to be when  
7 Mr. Martinez confirmed him and continued him as First  
8 Assistant, at that time.

9 MS. STRICKLAND: Yes, your Honor, I understand.

10 THE COURT: All right.

11 So at that time, sir, what did you do know about  
12 his, um, actual trial experience?

13 THE WITNESS: I -- I wasn't -- I had no knowledge  
14 as to whether he first-chaired, I know he second-chaired  
15 a trial in federal court. I don't know whether he  
16 first-chaired a trial in federal court.

17 THE COURT: Thank you.

18 Q. So you didn't ask him about his qualifications?

19 A. I already knew his qualifications.

20 Q. But you don't know whether he actually  
21 first-chaired a criminal jury trial in federal court?

22 A. That's not -- it has no relevance to me in  
23 appointing a first assistant, ma'am.

24 Q. I'm just asking whether you knew whether he had  
25 first-chaired a criminal --

1 MS. YOUNG: Objection, asked and answered.

2 THE COURT: Sustained, on that ground.

3 Q. When you became the Defender, did you organize the  
4 attorney structure to include team leaders?

5 A. Yes, ma'am.

6 Q. Did you also make decisions about who to select  
7 for other supervisory positions like First Assistant?

8 A. Yes, ma'am.

9 Q. Before you made these promotion decisions, did you  
10 post any announcements, internally or externally, for  
11 any of these positions?

12 A. No, ma'am.

13 Q. Did you invite qualified attorneys to apply for  
14 these positions?

15 A. No, ma'am.

16 Q. Did you conduct interviews for these positions?

17 A. When I became the Defender, I met with every  
18 single employee in that organization.

19 Q. Did you conduct formal interviews for the  
20 promotions?

21 A. I conducted informal interviews when people did --  
22 when people were not aware of what I was looking for, I  
23 interviewed every single employee in that organization.

24 Q. All right, and we'll get to that.

25 But after you announced these promotions, isn't it

1 true that a female Assistant Federal Public Defender  
2 filed an EDR complaint against you?

3 MS. YOUNG: Objection, relevance.

4 THE COURT: Sustained.

5 MS. STRICKLAND: Your Honor, may I be heard?

6 THE COURT: You may.

7 MS. STRICKLAND: He testified about his leadership  
8 style and organizational structure and an issue in this  
9 case is his discriminatory intent. So, um, we think it  
10 is relevant. And we would also appreciate the  
11 opportunity to make a proffer.

12 THE COURT: You may make a proffer, but not now.  
13 And I adhere to my ruling. Move on.

14 MS. STRICKLAND: Thank you, your Honor.

15 Q. So you testified that you did ask employees at the  
16 FDO for their feedback about who would be good  
17 candidates for these positions, is that right?

18 A. I don't recall me asking them their opinion on who  
19 would be good for those positions. I don't recall that,  
20 ma'am.

21 Q. You just testified though that you spoke to  
22 everybody in the office?

23 A. Yes, ma'am.

24 Q. And is one of the things that you spoke about with  
25 people in the office is their recommendations for who

1 might be a good candidate for these positions?

2 MS. YOUNG: Objection, asked and answered.

3 THE COURT: It is, and I recall it. It's  
4 sustained. Move on.

5 Q. So you don't recall then that one Assistant  
6 Federal Public Defender warned you that JP Davis was not  
7 suited to have supervisory authority over other people?

8 MS. YOUNG: Objection, hearsay.

9 THE COURT: No, no, this is -- she's challenging  
10 him as to the fact of a communication. I assume she's  
11 doing it in good faith. She may have the question.

12 Did you ever receive any such communication?

13 THE WITNESS: No.

14 THE COURT: All right, that's your answer.

15 Q. So if an Assistant Federal Public --

16 MS. STRICKLAND: I apologize. What?

17 THE COURT: I said that was his answer. Go ahead.

18 MS. STRICKLAND: All right.

19 Q. So if an attorney alleged that, in an EDR  
20 complaint, that she -- that that conversation --

21 MS. YOUNG: Objection, relevance, and also  
22 confidential information of other nonparties's EDR  
23 claims, which is akin to privacy act information.

24 THE COURT: I'll let her have the question.

25 MS. YOUNG: And that is protected under chapter --

1           THE COURT: The question is not evidence of a  
2 single thing. I'll let her have the question. You may  
3 object to it.

4       Q.     So if an employee alleged that the conversation  
5 did in fact occur, is it your testimony today that that  
6 employee was not being truthful?

7       A.     No.

8       Q.     That is not your testimony or you believe this  
9 employee was --

10      A.     I'm not saying that that employee was not  
11 truthful.

12      Q.     Okay. Thank you.

13            So you chose to retain JP Davis as First  
14 Assistant, is that right?

15      A.     Yes, ma'am.

16      Q.     And you did so even though he had very limited  
17 practice experience, is that right?

18            MS. YOUNG: Objection, misstates prior testimony.

19            THE COURT: It does, sustained.

20            MS. STRICKLAND: I'll rephrase.

21      Q.     You chose to retain him as First Assistant even  
22 though he had no experience as first chair in a criminal  
23 jury trial?

24            MS. YOUNG: Objection, asked and answered.

25            THE COURT: No, she may have it, if that's the

1 objection.

2 You may answer.

3 A. Yes, I appointed him, yes, ma'am.

4 Q. So your testimony today was that I was not  
5 qualified to become a line Assistant Public defender?

6 MS. YOUNG: Objection, misstates prior testimony.

7 THE COURT: It does, that wasn't his testimony.

8 Q. Your testimony was that -- I'm happy to allow you  
9 to clarify, but that's all I heard, that you repeatedly  
10 testified that you believed that I was not capable of  
11 handling my own caseload?

12 A. That's correct.

13 Q. So that is your testimony today?

14 A. That's correct.

15 Q. But you believe JP was qualified to be the First  
16 Assistant of the FDO?

17 A. That's correct.

18 Q. So as the First Assistant, does JP Davis have a  
19 supervisory role in the organization?

20 A. Yes, ma'am.

21 Q. Did he have supervisory authority over me?

22 A. Yes, ma'am.

23 Q. Did he have authority to refer me for disciplinary  
24 action?

25 A. Yes, ma'am.



1 Q. Did he oversee the whole office?

2 A. Yes, ma'am.

3 Q. And does that include the trial and the Appellate  
4 Unit?

5 A. Yes, ma'am.

6 Q. Did he supervise all employees at the FDO except  
7 for you?

8 A. Yes, ma'am.

9 Q. Thank you.

10 You testified earlier about your observations of  
11 my work performance, is that right?

12 A. Can you repeat the question?

13 Q. Sure.

14 You testified earlier that you had a chance to  
15 observe my work performance at the FDO, is that correct?

16 A. Yes. Yes, I observed it. Yes.

17 Q. Isn't it true that I was hardworking, responsible,  
18 and my work was of high quality?

19 A. Yes.

20 Q. Isn't it true that I was praised by attorneys in  
21 the office for my performance?

22 A. Yes.

23 Q. Did you think highly of my performance?

24 A. I thought highly of your performance on the **Dixon**  
25 trial and my observation of your performance was

1 strictly in reference to what you did on the **Dixon**  
2 trial. I have no opinion about what you did on other  
3 cases.

4 THE COURT: I understood you --

5 Q. But I'm saying --

6 THE COURT: Wait. Wait. Wait a minute.

7 Because I understood you earlier to testify that  
8 she called you at one time when your obligation was to  
9 cross-examine a police officer, she was in a panic, you  
10 testified about it, and then, if my notes are correct,  
11 you said she went ahead and cross-examined and she did  
12 it very well.

13 Have I recalled that correctly.

14 THE WITNESS: Yes, your Honor, you have.

15 THE COURT: All right.

16 Go ahead, Ms. Strickland.

17 MS. STRICKLAND: Thank you.

18 Q. And you testified about the **Dixon** case. Just to  
19 be clear, did you assign me to work on the **Dixon** case?

20 A. You requested it. You volunteered. And I  
21 approved it. Yes, ma'am.

22 MS. STRICKLAND: Okay, let's look at Admitted  
23 Exhibit 36. (On screen.) Okay, scroll down.

24 (Scrolls.)

25 Q. Are you familiar with this document?

1 A. Yes, ma'am.

2 Q. Are these text messages between you and JP Davis?

3 A. Yes, ma'am.

4 Q. Did you send a text message to JP Davis on May  
5 29th, 2018 where you stated that you didn't see a  
6 problem with me second-chairing the trial, but you would  
7 still be involved in the case?

8 A. Yes, ma'am.

9 Q. Did you communicate to me that you would still be  
10 involved in supervising the case?

11 A. Yes, ma'am.

12 Q. Okay, thank you.

13 Did you use the case -- the **Dixon** case, excuse me,  
14 to teach me about client management?

15 A. Yes, ma'am.

16 Q. Was I open eyes, open ears, listening to every  
17 aspect and really appreciated everything?

18 A. Yes, ma'am.

19 Q. Is it fair to say that I was very interested in  
20 learning from you and taking training opportunities?

21 A. Yes, ma'am.

22 Q. Before June 12th, 2018, did you ever tell me that  
23 I was no longer assigned to work on the **Dixon** case?

24 A. Before June 12th?

25 Q. Before.

1 A. (Pause.) I don't recall -- I'm sorry, I don't  
2 recall the date that I removed you from the **Dixon** case,  
3 to be honest.

4 Q. Um, I just want to --

5 MS. STRICKLAND: Oh, we've lost the video  
6 connection. (Pause.) Okay, there it is. Thank you.

7 Q. If you told Heather Beam that the removal happened  
8 on June 12th, 2018, do you have any reason to doubt  
9 that, the accuracy of that?

10 A. No. No.

11 Q. Okay. Was it reasonable for me to follow your  
12 order?

13 A. Yes.

14 Q. Okay. Did you fire the attorney who was serving  
15 as first chair on the life-sentence case?

16 MS. YOUNG: Objection, that relates to  
17 confidential information pursuant to the EDR plan, which  
18 the parties have protected.

19 THE COURT: I don't see its relevance and I'm  
20 excluding it on the ground of relevance.

21 MS. STRICKLAND: May I be heard, your Honor?

22 THE COURT: You may be.

23 MS. STRICKLAND: He testified on direct that he  
24 removed -- he fired the first-chair attorney because he  
25 was concerned about potential ineffective assistance.

1 So I just wanted to ask him about his stated reasons.

2 MS. YOUNG: It misstates prior testimony.

3 THE COURT: It does. My notes show that the -- on  
4 **Dixon**, that the fellow who was on first chair left the  
5 office, and that put the situation in a difficult light  
6 because the case was coming on for trial and it was  
7 necessary to secure a continuance. That's what my notes  
8 show. I sustain the objection.

9 MS. STRICKLAND: May I have an opportunity to make  
10 a proffer?

11 THE COURT: Not now, but at some time, yes.

12 Q. So you testified that you were concerned with a  
13 potential ineffective assistance claim regarding the  
14 **Dixon** case, is that right?

15 A. Yes, ma'am.

16 Q. Do you believe that I provided ineffective  
17 assistance of counsel on the **Dixon** case?

18 A. You were only on the case as a second chair.

19 Q. So was ineffective assistance even relevant to me,  
20 to my performance on the case?

21 A. Yes, with your lack of experience on a case where  
22 the defendant was looking at life mandatory without  
23 parole and you had never handled a case of that nature.

24 Q. Didn't you just testify that you were supervising  
25 the case?

1 A. Yes, I was supervising the case.

2 Q. Okay. Did you replace the attorney, who was the  
3 first chair, with another Assistant Federal Public  
4 Defender?

5 A. I took over the case.

6 Q. Did you have a second chair on that case?

7 A. No, ma'am.

8 Q. You did not have a second chair on that case?

9 A. No, ma'am.

10 Q. So if an attorney stated that she served as second  
11 chair with you and that you failed to follow any of the  
12 basic chores preparing the case, is it your testimony  
13 today that that attorney is being untruthful?

14 MS. YOUNG: Objection, relevance.

15 THE COURT: Yeah, it is. You've rested the case,  
16 your case. Sustained.

17 MS. STRICKLAND: Your Honor, we'd like to make a  
18 proffer and I -- he testified that his reasons for  
19 taking these actions with regard to --

20 THE COURT: No, wait a minute. Look, you can make  
21 these proffers, but you will make them out of the time  
22 that we're counting, because that's not fair, just to  
23 use up time while you make proffers. But of course you  
24 may make a proffer. Now that's ultimately contrary --  
25 what you're suggesting is utterly contrary to what he

1 has testified.

2 Now it's so contrary that maybe you want to put on  
3 some rebuttal evidence, because we've gotten into this,  
4 and if there's someone who knows, um, maybe you would  
5 like to call such a witness. But I'm not simply -- I  
6 normally, on cross-examination, assume the good faith of  
7 the examiner, but this is entirely different than the  
8 story that I've been given. Now if there's evidence to  
9 that effect, well I would be interested to see it. But  
10 you can't just assert it.

11 Go ahead.

12 MS. STRICKLAND: Thank you, your Honor.

13 Q. Mr. Martinez, you testified that you were upset  
14 with plaintiff, me, for not being a team player, is that  
15 right?

16 A. That's correct.

17 Q. And that was because of expressed hesitancy to  
18 accept a number of cases from an attorney who left the  
19 FDO, is that right?

20 A. That's correct.

21 Q. And your testimony, I believe repeatedly on  
22 direct, was that I had said I was just too busy to work  
23 on these cases, is that right?

24 A. In summary, yes, ma'am.

25 MS. STRICKLAND: Okay, let's pull up Admitted 165

1 from yesterday. (On screen.) That's okay. I think  
2 it's -- is it FY? Okay, go ahead and scroll down to the  
3 bottom of the chain. (Scrolls.) Okay, right here.  
4 Right here. Yes, that's good.

5 Q. Is this an e-mail from Yvette Arroyo Becker to me?

6 A. Yes, ma'am.

7 Q. Who is Ms. Arroyo Becker?

8 A. She's a legal assistant.

9 Q. Did you ever discuss this list of cases with me?

10 A. No, ma'am.

11 MS. STRICKLAND: Okay, let's scroll up. (On  
12 screen.) Okay, that's good. Go down a little bit.  
13 Yes, thank you.

14 Q. Is this an e-mail from me to you about this list  
15 of cases?

16 A. If you'd scroll up? I just want to see it.  
17 (Scrolls screen.)

18 I believe so, yes. Yes, ma'am.

19 Q. Okay, and it's dated June 26th?

20 A. Yes, ma'am.

21 Q. Did I state in this e-mail, "I wanted to be  
22 upfront with you about his scheduled commitments. I  
23 don't want to be ineffective simply by being assigned  
24 more cases than I can handle."

25 Is that what it states?



1 A. Yes, ma'am.

2 Q. Does it also state, "In addition, I am concerned  
3 that I have not received any training in handling these  
4 types of cases. For example, I have never worked on an  
5 illegal reentry case. I was assured that these  
6 particular cases are straightforward, but in similar  
7 situations in the past I have sometimes found that not  
8 to be the case."

9 Is that what it says?

10 A. Yes, ma'am.

11 Q. And does it also state, "I am happy to talk with  
12 you in person about this further and I am of course  
13 happy to do what needs to be done to help with the  
14 office, but I have concerns about this situation and I  
15 felt I needed to express them to you directly."

16 Is that what it states?

17 A. Yes, ma'am.

18 Q. Does the statement that "She is of course happy to  
19 do what needs to be done to help with the office," sound  
20 like someone who is not a team player?

21 A. That statement does not sound like someone who  
22 does not want to be a team player, correct.

23 Q. Is the fact that I was busy the only reason why I  
24 stated I was concerned about handling these cases?

25 A. Can you repeat that question?

1 Q. Is the fact that I was quote, unquote "busy" the  
2 only reason why I stated I was concerned about handling  
3 these cases?

4 A. Yes, ma'am. Yes.

5 Q. Does the e-mail not state that I was also  
6 concerned about a lack of training?

7 A. Yes, it does.

8 Q. So it's not just busyness?

9 A. As far as you're concerned, yes, ma'am, that's  
10 right.

11 Q. There was also an expressed lack of training, is  
12 that not right?

13 A. Yes, ma'am.

14 Q. And the e-mail also explains that while I  
15 understood these cases can be straightforward, my  
16 experience was that that was not always the case?

17 A. Yes, ma'am.

18 Q. Did it ever occur to you that these concerns might  
19 have had something to do with the fact that you had just  
20 removed me from the **Dixon** case?

21 A. I don't understand your question, ma'am?

22 Q. Did you ever occur to you that this e-mail might  
23 have been directly related to the fact that you had just  
24 removed me from the **Dixon** case?

25 A. I don't see any relation between this e-mail and

1 the **Dixon** case.

2 Q. Okay. So it never occurred to you that there  
3 might have been a concern that because you had told me,  
4 less than two weeks earlier, that I couldn't even  
5 provide research and reading support due to the risk of  
6 ineffective assistance, you didn't think that had  
7 anything to do with this e-mail that I sent?

8 A. I'm not understanding your question, ma'am. I'm  
9 sorry.

10 Q. So on June 12th, you took me off the **Dixon** case,  
11 correct?

12 A. Correct.

13 Q. And you expressed, you testified on direct that  
14 you were concerned about ineffective assistance with me  
15 being second chair?

16 A. (Pause.) You asked me if I was concerned about  
17 ineffective assistance on the case, yes, I was concerned  
18 about that, but not just solely because you  
19 second-chaired **Dixon**.

20 Q. Right, and you removed me from the case  
21 ultimately?

22 A. I removed you for strategic reasons because I  
23 needed to prepare quickly for the trial.

24 Q. Does this e-mail discuss the concerns about  
25 ineffective assistance?

1 THE COURT: Well the e-mail speaks for itself.

2 A. This has nothing to do with --

3 Q. Did you ever consider the possibility that I was  
4 afraid that I was being set up to fail by being provided  
5 cases with no training?

6 A. Ma'am, how -- I cannot get into your head about  
7 what you were feeling around the time.

8 Q. I was just asking about your interpretation of the  
9 e-mail.

10 A. My interpretation is you originally volunteered to  
11 handle a life mandatory without the possibility of any  
12 parole, a serious case, you were willing to do that just  
13 weeks before this, and now, when we're asking you for  
14 some help, you advise us that you're too busy to handle  
15 four or five very easy cases. You weren't busy for the  
16 **Dixon** trial, but now all of a sudden you are busy. To  
17 me, based upon my 35 years experience in dealing -- in  
18 being in the defender culture, this shows me that you're  
19 not a team player -- it's an indication that you're not  
20 a team player.

21 Q. So you were upset about this, is that fair?

22 A. Yes.

23 Q. Did you ever discuss your concerns with me?

24 A. No, ma'am.

25 Q. Did you ever give me an opportunity to show you

1       that I was a team player and willing to help?

2       A.       I gave you the opportunity when we gave you the  
3       four or five cases to handle.

4       Q.       But you never discussed the fact that you were  
5       upset or that you perceived -- you had this perception  
6       of your -- you never discussed that with me?

7       A.       I didn't need to discuss anything further, this  
8       was clearly a reflection of character.

9       Q.       Did you make an assumption that I wanted to pick  
10      and choose the cases I wanted to work on without even  
11      talking to me about it?

12      A.       Yes, because this is a reflection of your  
13      character.

14      Q.       And it's an assumption?

15      A.       It's a reflection of your character, ma'am, that's  
16      my observation.

17      Q.       But you never followed up and had a conversation  
18      about this?

19              MS. YOUNG:   Objection, asked and answered.

20              THE COURT:   It is.   Sustained.

21              MS. STRICKLAND:  I'll move on.

22      Q.       You testified earlier that you thought it was a  
23      bad thing that I called you personally before my first  
24      cross-examination, is that right?

25      A.       It's not a bad thing.

1 MS. YOUNG: That misstates prior testimony.

2 Q. You viewed it as a --

3 THE COURT: Wait. Wait. Wait, there's been an  
4 objection.

5 I didn't understand from his prior testimony that  
6 it was her first cross-examination. She's asserted that  
7 now in her question. But I'll assume that that's in  
8 good faith. And, um --

9 Did you think it strange that she called you in  
10 that other circumstance about the policeman?

11 THE WITNESS: Yes, I found it strange. Yes, your  
12 Honor.

13 THE COURT: All right.

14 Q. Mr. Martinez, have you ever heard of "imposter  
15 syndrome"?

16 A. I never heard of that, ma'am.

17 Q. Have you ever heard of the phenomenon where  
18 high-achieving individuals experience self-doubt?

19 MS. YOUNG: Objection, relevance.

20 A. I don't think what you're talking about, ma'am.

21 Q. I'm not talking about --

22 THE COURT: Wait. Wait. Wait. Wait a minute.  
23 He answered the question, so the objection is moot. He  
24 says he doesn't know what you're talking about. The  
25 inquiry into this syndrome is irrelevant here.

1 Sustained.

2 Q. And you did testify that I did do the cross-  
3 examination, isn't that right?

4 A. You did do the cross-examination, yes, ma'am.

5 Q. And it was excellent?

6 A. I didn't say "excellent." But you did a good job.  
7 Yes, you did a good job.

8 Q. Are you aware of the possibility that women, more  
9 than men, can experience self-doubt particularly in the  
10 legal profession?

11 MS. YOUNG: Objection, relevance.

12 THE COURT: No, she may have that question. Only,  
13 um -- she may have that question, framed in that  
14 fashion.

15 You may answer, sir.

16 A. In my experience in over 35 years of dealing with  
17 many female defenders and many male defenders equally is  
18 that they've never had self-doubt when it comes to  
19 representing an indigent defendant and having to cross-  
20 examine a police officer or take on four or five simple  
21 cases to help a Federal Defender.

22 Q. So you are completely unaware of the phenomenon  
23 that affects the legal profession where women have more  
24 self-doubt than men because of the history of sexism in  
25 the legal profession, you've never heard of that?

1 MS. YOUNG: Objection, asked and answered.

2 THE COURT: Well I don't know that that's been  
3 asked and answered, but it's quite conclusory and I  
4 don't think it has a foundation. So I'm going to  
5 sustain it.

6 MS. STRICKLAND: Thank you, your Honor.

7 Q. You testified earlier that you met with me on July  
8 2nd, 2018, is that right?

9 A. Yes, ma'am.

10 Q. And you testified, I believe the words you used  
11 were, that you "had no indication whatsoever that there  
12 was any allegation of sexual harassment in this  
13 meeting," is that right?

14 A. That's correct, ma'am.

15 MS. STRICKLAND: I would like to turn to Admitted  
16 Exhibit 17.

17 (On screen.)

18 Q. Mr. Martinez, are you familiar with this document?

19 A. Yes, ma'am.

20 Q. Is this a Significant Event Log from July 5th,  
21 2018?

22 A. Yes, ma'am.

23 Q. Does it have that title because a significant  
24 event happened on July 5th, 2018?

25 A. Yes, ma'am.



1 Q. Does this Significant Event Log say, "I wanted to  
2 clarify with Caryn any issue about any harassment with  
3 JP"?

4 A. Yes, ma'am.

5 Q. Does this Significant Event Log say, "I then  
6 specifically asked her about any possibility harassment  
7 by JP"?

8 A. Yes, ma'am.

9 Q. Does this Significant Event Log say that "Caryn  
10 said she felt creeped out by JP Davis's behavior"?

11 MS. YOUNG: Objection, the document's in evidence  
12 and it speaks for itself.

13 THE COURT: It does, but she may follow up and  
14 press it. Well you don't need to press that question,  
15 it's in evidence and it says that. Now ask him a  
16 question.

17 Q. Did you understand, based on this situation, that  
18 it was important to separate me from JP's supervision  
19 based on feeling "creeped out"?

20 A. In terms of supervision I was focused on -- as I  
21 indicated in my prior testimony in response to your  
22 Honor's question, I was focused on the mentor/mentee  
23 relationship, not on the supervisory relationship, to be  
24 honest, and I was under the impression that the only  
25 issue I was dealing with is a misunderstanding or a

1 breakdown of communication between you and Mr. Davis  
2 about him demanding that you appear at an interview or  
3 on a PSI for a client. That was the only issue that I  
4 was dealing with at that time.

5 Q. But you wanted to clarify whether there was an  
6 issue about sexual harassment, is that not right?

7 A. Yes, ma'am.

8 Q. Because you were concerned about that possibility,  
9 is that not right?

10 A. I wasn't concerned -- you were using language  
11 about putting boundaries on Mr. Davis -- in the certain  
12 language you were using, I just wanted to clarify and  
13 make sure that there was not a sexual harassment issue.

14 Q. Because it sounded like maybe there was, is that  
15 not right?

16 A. It sounded like there was. And you didn't give me  
17 any information indicating that there was.

18 Q. But just to be clear, that's what you talked  
19 about, right?

20 A. Yes, ma'am.

21 Q. Is there some difference between a mentorship and  
22 supervision in this context of deciding whether it's  
23 appropriate to separate employees?

24 A. There is a difference, but I was not focused on  
25 the supervisory aspect, ma'am, I was focused on the

1 mentor/mentee relationship, because I thought the only  
2 issue was Mr. Davis being angry with you when you  
3 canceled the PSI interview.

4 Q. So you believe that it was appropriate for JP  
5 Davis to continue acting as a supervisor at this time?

6 A. I didn't say I didn't think it was appropriate, I  
7 was only focused on the mentor/mentee relationship,  
8 because I thought the only issue I was dealing with was  
9 the cancellation of the PSI interview and Mr. Davis's  
10 reaction to that.

11 Q. Sir, is it your testimony that you just didn't  
12 think about the supervisory relationship at all then?

13 A. I did not think about the supervisory relationship  
14 at all because I was focused on making sure that you  
15 were comfortable, and if you were not, then breaking up  
16 the mentor/mentee relationship.

17 Q. Is it your normal practice to make Significant  
18 Event Logs of conversations about ordinary work  
19 disagreements?

20 A. This -- this document speaks for itself.  
21 "Significant Event Log"? If it was just a disagreement  
22 between two individuals, I am not going to write down  
23 "Significant Event Log." But this was a significant  
24 event.

25 Q. I apologize, I didn't quite understand your answer

1 to my question.

2 Is it your normal practice to make Significant  
3 Event Logs of conversations about ordinary work  
4 disagreements?

5 A. No.

6 Q. Thank you.

7 You testified earlier that a few weeks later you  
8 inadvertently assigned me back under JP Davis's  
9 supervision on his trial team, is that right?

10 A. I did not solely do that, there was -- during a  
11 meeting with all the team leaders and management, there  
12 were 7 or 8 people present at that meeting, and it was a  
13 long meeting, and as a team they were trying to  
14 reshuffle our resources, and we inadvertently, yes, put  
15 you to work on JP's team.

16 Q. Well I mean to be clear, you're the one who's in  
17 charge, you're the Unit Executive, is that not right?

18 A. Yes, but your --

19 Q. Thank you. That's enough. Thank you.

20 And you testified that after you did that, you  
21 told JP Davis about my allegations against him, is that  
22 right?

23 A. On July 24th, I told him the allegations of you  
24 feeling uncomfortable and the bike incident, yes, ma'am.

25 Q. Were you concerned about violating my confidences

1 by telling JP Davis about my allegations?

2 A. Yes, I was concerned.

3 Q. So -- but you did it anyway, is that right?

4 A. Yes, because that was the only way that I could  
5 ensure, based upon the reshuffling within the office,  
6 that he would not be -- that you wouldn't be doing any  
7 work for him.

8 Q. But the only way that you could ensure that I  
9 wouldn't be doing any work for him would be to tell him  
10 about my allegations of sexual harassment?

11 A. Yes, ma'am, because -- yes, ma'am.

12 Q. Were you concerned about the possibility that I  
13 would be retaliated against because you told JP Davis  
14 about my allegations?

15 A. I was not concerned about that, about retaliation,  
16 no.

17 Q. Okay.

18 MS. STRICKLAND: Let's pull up Lettered Exhibit Z.

19 (On screen.)

20 Q. You testified on direct examination about a  
21 management meeting on July 20th, 2018, is that right?

22 A. Yes, ma'am.

23 Q. And you testified that my job duties did not  
24 change as a result of the changes to the Research and  
25 Writing position, is that right?

1 A. That's my understanding, yes, ma'am.

2 Q. Okay. Please take a look at the document in front  
3 of you.

4 MS. STRICKLAND: If we can just scroll through it.  
5 (Scrolls.) Yes, keep going up to the top, please.

6 (On screen.)

7 Q. Are you familiar with this document?

8 A. I'm familiar with it, yes, ma'am.

9 Q. Is this the, um, the team leader meeting agenda  
10 from July 20th, 2018?

11 A. Yes, ma'am.

12 MS. STRICKLAND: Go ahead and scroll down too, I  
13 think it's where the video attachment is.

14 (Scrolls.)

15 THE COURT: What's the identification on this?

16 MS. STRICKLAND: This is Lettered Exhibit Z and I  
17 move to -- I move to admit this exhibit.

18 THE COURT: No objection to that, is there?

19 MS. YOUNG: No objection, your Honor.

20 THE COURT: It is admitted, Exhibit, um, 173.

21 (Exhibit 173, marked.)

22 MS. STRICKLAND: Thank you.

23 Q. Does this document state: "Present, Tony, Bill,  
24 JP, Josh, Erin, Mary Ellen, Peter, Holly"?

25 A. Yes, ma'am.

1 Q. Is that because those employees were members of  
2 management present at that meeting?

3 A. Yes, ma'am.

4 Q. Is this document the meeting notes from the  
5 meeting you testified about earlier in your testimony?

6 A. Yes, ma'am.

7 Q. Does this document accurately reflect the  
8 management decisions that were made at that meeting, to  
9 your knowledge?

10 A. To my knowledge? I didn't create the document,  
11 this document was created by Holly Dixon, and to my  
12 knowledge it's accurate.

13 Q. Okay, thank you.

14 MS. STRICKLAND: Now let's see. Yeah, okay.

15 (On screen.)

16 Q. So does this document state -- and I'm looking at  
17 the second star, "Bill, we have enough money and  
18 approval for 2 FTEs at the AFD salary range. This is  
19 counting Josh's position on 1 FTD at a lower range."

20 Do you see that?

21 A. If you're reading from the notes --

22 Q. I'm reading from --

23 A. I'm agreeing that the document says what it says.  
24 I'm not disagreeing with you.

25 Q. Okay. So does this document indicate that there

1 was at least one open Assistant Federal Defender  
2 position at the time of this meeting?

3 A. Ma'am, again I'm not arguing with you about what  
4 the document says, this document has a lot of  
5 information in it, as I indicated in my testimony, it  
6 was a long day, there were a lot of moving parts within  
7 the organization. I cannot recall 98 -- 97 percent of  
8 what happened on this day, because this happened 5 1/2  
9 years ago. So I'm not disagreeing -- if you're going to  
10 read these notes, I'm not disagreeing that the notes are  
11 there and it says what it says.

12 Q. Okay, thank you. So this document does in fact  
13 indicate that there was at least one open Assistant  
14 Federal Defender position at the time of the meeting, is  
15 that correct?

16 MS. YOUNG: Objection, asked and answered.

17 THE COURT: It is, and his answer that he just  
18 gave says that's the extent of his agreement. You're  
19 putting a spin on it. It says what it says. You may  
20 argue it, I mean if there's some evidence of that,  
21 that's true, but he says he doesn't have a specific  
22 memory.

23 Mr. Martinez, I don't want to misstate anything  
24 that you've said. Did I capture your answer to the  
25 preceding question accurately?



1 THE WITNESS: Yes, your Honor. Thank you.

2 THE COURT: Go ahead.

3 MS. STRICKLAND: Your Honor, I'll move on.

4 THE COURT: Go ahead.

5 MS. STRICKLAND: Thank you.

6 Q. So you wouldn't dispute then, based on what this  
7 document says, that, um, the Appeal full-time equivalent  
8 at that time was 2.75, but they had been surviving with  
9 1.75 FTEs, is that right?

10 A. Ma'am, I just said to you -- indicated to you that  
11 if you're going to read what this document says, that  
12 I'm not disagreeing with what this document says. I  
13 have no recollection of 98 percent of what this document  
14 says because this happened 5 1/2 years ago and many  
15 things occurred on this day. As you can see, the notes  
16 are lengthy and there are many moving parts.

17 Q. Okay, I'm just trying to understand. You  
18 testified earlier, um, that moving to exclusive appeals  
19 was not possible because there wasn't an open position,  
20 is that right?

21 A. I didn't say there was not an open position.

22 Q. You testified that there was so much work for the  
23 trial attorneys that you couldn't put me exclusively in  
24 Appeals, is that not right?

25 A. Ma'am, what I said was we have four trial teams,

1 each trial team has three attorneys on each team, that's  
2 12 attorneys. When Caleb Newman left, the one R&W, I  
3 was down to two R&Ws, you and Jared Martin. If I were  
4 to have you work on appeals exclusively, that would  
5 leave Jared Martin supporting 12 trial attorneys. We  
6 could not do that in order to function and provide  
7 effective assistance of counsel to our clients.

8 Q. Mr. Martinez, were you not advertising a new  
9 appellate attorney position at that very time?

10 A. It was -- it was a position for an APD that would  
11 be doing Research and Writing work and supporting trials  
12 and the appeals, yes, ma'am.

13 Q. Okay, thank you. So you still testified that --

14 THE COURT: Excuse me, Ms. Strickland, but we're  
15 going to stop now because I -- I will allow Mr. Martinez  
16 to step down.

17 (Witness steps down.)

18 THE COURT: About how much more have you for him?

19 MS. STRICKLAND: Um, probably about 30 minutes,  
20 maybe a little more.

21 THE COURT: All right, well you can continue on  
22 Monday.

23 As we stand now, you've taken up a day and 15  
24 minutes, the defense has taken up a day, 3 hours, and 15  
25 minutes.

1           Mr. Kolsky, it looks to me like you're going to  
2       finish your testimony anyway on Monday, that's correct,  
3       isn't it?

4           MR. KOLSKY:   It may go into Tuesday, your Honor,  
5       just depending on how much cross there is, which we  
6       can't anticipate.

7           THE COURT:   Well in another 15 minutes you'll have  
8       an hour and 45 minutes left and you get half an hour for  
9       closing, so it looks to me like you'll be shutting down  
10      on Monday.   But I will give you the time that I have  
11      stated.   And I appreciate everyone being prompt.

12          All right, I was thinking that if we finish the,  
13      um, testimony on Monday, perhaps even if we stop before  
14      1:00, we might give you -- or my intention is to give  
15      you, if we finish, until Tuesday morning and have final  
16      arguments on Tuesday morning.   But we can discuss that  
17      further on Monday.

18          Now, Ms. Strickland, you want to make various  
19      offers of proof.   You may do so.   I'm going to recess.  
20      You may recite your offers of proof, they'll be on the  
21      record, the Court Reporter will take it down.

22          Very well, we'll stand in recess.   I wish you a  
23      good weekend.   We'll stand in recess until 9:00 a.m. on  
24      Monday morning the 18th of December.   We'll recess.

25          THE CLERK:   All rise.

1 (Recess, 1:00 p.m.)

2 MS. STRICKLAND: So the offer of proof is exhibits  
3 -- um, okay.

4 So we do understand that this document has been,  
5 um, marked as confidential and that the defendants want  
6 to seek to potentially seal it and have the courtroom  
7 closed. My understanding of the Judge's ruling is that  
8 he was not going to do that. But we wanted to put that  
9 on the record.

10 THE CLERK: Okay, the Court Reporter is taking it  
11 down right now.

12 (Pause.)

13 MS. STRICKLAND: Okay, I'm sorry, can I -- okay,  
14 so, um, we are making an offer of proof, this is for  
15 Lettered Exhibit BB, it is redacted for personally-  
16 identifying information, and, um, this -- it begins with  
17 a, um, "Defendants's responses regarding other EDR  
18 complaints against the FDO," and, um, there are various  
19 things in here that we would like to offer to refute  
20 Mr. Martinez's testimony, um, if appropriate to a  
21 rebuttal piece.

22 But one of the things is that when Mr. Martinez  
23 testified that he was reorganizing the attorney  
24 structure, after he announced the promotions, a female  
25 Assistant Federal Public Defender filed an EDR complaint

1     against him and alleged that she was discriminated  
2     against because she was demoted from a supervisory  
3     position to a line attorney and replaced by a man.

4             The second offer of proof is that another  
5     Assistant Federal Public Defender warned Mr. Martinez  
6     that JP Davis was not suited to have supervisory  
7     authority over other people, and she told him that he  
8     should not rely on Mr. Davis. As part of her  
9     allegations in her EDR complaint, she alleged that she  
10    was later retaliated against in part for making those  
11    remarks.

12            Another offer of proof is --

13            MR. KOLSKY: I want to say that this document  
14    should not be displayed publicly.

15            MS. McMAHON: Yeah, it's not sufficiently  
16    redacted.

17            (Pause.)

18            MR. STRICKLAND: Defense counsel has provided this  
19    document before trial.

20            THE CLERK: Listen, the Judge is not here and --

21            MS. McMAHON: Right, the EDR information has all  
22    been sealed throughout the proceeding, because these --

23            MR. STRICKLAND: That is incorrect, they have not  
24    been sealed for several --

25            THE CLERK: Excuse me. Excuse me. Excuse me. We

1 are not in court right now, there's no need to display  
2 any evidence, we are simply making an offer of proof, as  
3 requested, with the Court Reporter.

4 MS. STRICKLAND: Thank you.

5 So, um, in response to Mr. Martinez's statements  
6 that he took personnel actions regarding the **Dixon** case,  
7 including removing the first chair based on his concerns  
8 about ineffective assistance of counsel, this employee,  
9 um, or this attorney who was removed, in fact filed an  
10 EDR complaint against Mr. Martinez alleging that he was  
11 retaliated against for reporting wrongful conduct, and  
12 then he testified that he took over the case and that  
13 the case was handled better because he took it over.

14 Our offer of proof on that is that he testified  
15 that he did not have a second chair on that case.  
16 There's a female Assistant Federal Public Defender who  
17 filed an EDR complaint against Mr. Martinez and in part  
18 of her allegations she alleged that she was assigned as  
19 the second chair of that case, that Mr. Martinez failed  
20 to follow any of the basic steps towards properly  
21 preparing the case, that the motions that Mr. Martinez  
22 eventually filed in the case were motions that the  
23 Research and Writing attorneys, including myself and  
24 Jared Martin, had proposed months earlier. And this  
25 attorney alleged that Mr. Martinez made other

1     questionable decisions, like replacing an experienced  
2     litigation paralegal with a new paralegal who had very  
3     limited criminal defense background and had never  
4     handled a case of this type. This attorney also alleged  
5     that Mr. Martinez had mismanaged the plea negotiations  
6     with the government. And she also alleged that when  
7     Mr. Martinez lost the plea offer, um, as a result of  
8     mismanaging the plea negotiations, he referred to the  
9     female Assistant United States Attorney as being a  
10    "fucking bitch."

11           I believe that's all we have for right now.

12           THE CLERK: Thank you. See you all on Monday  
13    morning.

14           (Adjourned, 1:00 p.m.)  
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## C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes  
before Judge William G. Young, on Thursday, December 14,  
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 03-11-24

\_\_\_\_\_  
RICHARD H. ROMANOW      Date